

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S FINAL APPROVED TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

November 2, 2006

9:33 a.m.

Reported By:

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Certified Reporter (AZ 50127)

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
 2 ELECTIONS COMMISSION, convened at 9:33 a.m. on November
 3 2, 2006, at the State of Arizona, Clean Elections
 4 Commission, 1616 W. Adams, Conference Room, Phoenix,
 5 Arizona, in the presence of the following Board members:
 6 Ms. Marcia Busching, Phoenix, Chairperson
 7 Mr. Gary Scaramazzo, Page, Teleconference
 8 Ms. Ermila Jolley, Yuma
 9 Mr. Carl Kunasek, Maricopa
 10 Ms. Royann J. Parker, Pima, Teleconference
 11 OTHERS PRESENT:
 12 Todd Lang, Executive Director
 13 Diana Varela, Assistant Attorney General
 14 Colleen McGee, Deputy Director
 15 Michael Becker, Voter Education Manager
 16 Daniel Ruiz II, Campaign Finance Manager
 17 Eric Peterson, Administrative Counsel
 18 David Maddox, Attorney for Munsil Campaign
 19 Lee Munsil, Munsil Campaign
 20 Doug Drury, Len Munsil for Governor
 21 Mike Bailey, Citizen
 22 Lauren Lowe, Perkins Coie Brown & Bain
 23 Eric Ehst, Clean Elections Institute
 24 Lisa Hauser, Prop 206 Campaign
 25 Jan van Amerongen, Citizen
 Barbara Klein, League of Women Voters
 Phil Corbell, Citizen
 Kim Demarchi, Napolitano Campaign

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P R O C E E D I N G

1 CHAIRPERSON BUSCHING: Good morning. I'm
 2 Marcia Busching. I'm Chairman of the Citizens Clean
 3 Elections Commission.

4 Today is Thursday, November 2nd, 2006. It's
 5 9:33 a.m., and we're at 1616 West Adams, Suite 110,
 6 Phoenix, Arizona 85007.

7 The Commission may vote to go into executive
 8 session, which will not be open to the public for any
 9 item listed on the agenda for obtaining legal advice.
 10 All matters on the agenda may be discussed, considered,
 11 and are subject to action by the Commission.

12 I want to note for the record that three
 13 Commissioners are in person and present, and the other
 14 two Commissions -- Commissioners are appearing by
 15 telephone.

16 The first item on the agenda is call to order,
 17 which I've already done.

18 The second item is consideration and possible
 19 ratification of issuance of matching funds for reported
 20 push poll for the following: A) Edward Ableser and
 21 David Schapira.

22 Todd?

23 MR. LANG: Thank you, Madame Chair. Good

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1 morning, Commissioners.
 2 COMMISSIONER SCARAMAZZO: Good morning, Todd.
 3 MR. LANG: This is the ratification meeting.
 4 These are issuances -- these are instances -- that's the
 5 word I was looking for -- instances of expressed
 6 advocacy in which staff issued matching funds on
 7 relatively low amounts but which need your approval.
 8 But because of the time, because we're at the end of the
 9 election, we went ahead and cut the checks and now we're
 10 waiting for your approval.
 11 This first one is a push poll against Ed
 12 Ableser and David Schapira who are candidates for House
 13 of Representative in District 17. And you see the poll
 14 had two so-called questions. And I say "so-called"
 15 because you'll see that they're just criticisms of those
 16 candidates.
 17 The first one, "Would you be more or less
 18 likely to vote for Ableser if you knew he used his tax
 19 dollars on a margarita machine?"
 20 I think 99.99 percent of the folks answering
 21 that question would say no.
 22 And the second question --
 23 COMMISSIONER SCARAMAZZO: I don't know. If I
 24 was invited, I might say yes.
 25 MR. LANG: Actually, someone in the audience

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1 said something similar to that.

2 There's no invitation in the push poll,
 3 Commissioner.

4 And the second question is, "Would you be less
 5 likely to vote for Schapira if you knew he lived in an
 6 extended-stay hotel to establish residency?"

7 Again, 90 percent of the folks are going to
 8 say, whoa, carpet bagger.

9 So staff determined that this was a push poll.
 10 And after doing some investigation, tracked down Summit
 11 Consulting Group as a vendor. They were actually quite
 12 cooperative. They provided all the information. They
 13 let us know exactly how much they spent, which you see
 14 there was \$1,812.42 and was paid for by the Arizona
 15 Republican Party on October 30th.

16 A very traditional push poll phone call and
 17 everyone was up front about it. So, I'm not gnashing my
 18 teeth in frustration with this one. This one was above
 19 board, as much as these sorts of calls can be anyway.

20 You see there my evaluation of whether or not
 21 it constituted expressed advocacy and an independent
 22 expenditure. And I think here, even though it's done in
 23 the form of a question, I think there's only one
 24 ambiguous result from these so-called questions, and
 25 that is a vote against these two gentleman because these

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1 are highly critical questions.

2 And so I think there is no other reasonable
3 meaning. I don't think there's a real educational
4 function here, other than to educate folks in a way that
5 would entice them to vote no or vote against these
6 candidates. Consequently, because they are in a
7 negative light, because it was targeted to an electorate
8 and because it was right before the election, I consider
9 this to be expressed advocacy.

10 If you agree, we ask you to approve the award
11 of matching funds to these two candidates in the amount
12 of 50 percent of the total cost; that is \$906.21 for
13 each.

14 COMMISSIONER SCARAMAZZO: Why 50 percent?

15 MR. LANG: We break it down -- there were two
16 folks criticized, so we break it down and give them each
17 50 percent of the cost. If it had criticized only one
18 person, of course then we would award 100 percent of the
19 cost. Just like we do fliers and mailers as you will
20 see in the next agenda item.

21 CHAIRPERSON BUSCHING: Other questions of Mr.
22 Lang?

23 COMMISSIONER PARKER: Yes, I got one.

24 CHAIRPERSON BUSCHING: Ms. Parker?

25 COMMISSIONER PARKER: Todd, on number four of

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1 the recommendation, I think there's a typo there. We
2 talked about a --

3 MR. LANG: Yeah, that's a reminiscence from a
4 prior recommendation. You're right. It is a push poll.
5 I apologize for that.

6 CHAIRPERSON BUSCHING: Okay. Any other
7 questions for Mr. Lang?

8 If not, is there anyone from the public that
9 wishes to speak to this matter?

10 If not, the Chair will entertain discussion or
11 a motion.

12 COMMISSIONER SCARAMAZZO: I move to approve the
13 matching funds as requested.

14 COMMISSIONER KUNASEK: Second.

15 CHAIRPERSON BUSCHING: It's been moved by
16 Commissioner Scaramazzo and seconded by Commissioner
17 Kunasek that we approve the matching funds as
18 recommended by the Executive Director. All in favor
19 say, "aye."

20 (Chorus of ayes.)

21 CHAIRPERSON BUSCHING: Opposed, nay?

22 Chair votes aye. Motion carries.

23 Next item is Item III, consideration and
24 possible ratification of issuance of matching funds for
25 reported independent expenditures in the following slate

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1 mailers.

2 And as we've done in the past, I think what
3 I'll do is take comments generally at the beginning and
4 then we'll vote on each one individually.

5 So, with that, Mr. Lang?

6 MR. LANG: Madame Chair, if you don't mind, I'd
7 like to do a PowerPoint.

8 CHAIRPERSON BUSCHING: Okay.

9 MR. LANG: Is there some button -- isn't there
10 a button I can hit like F3 or something?

11 MS. MCGEE: Yeah.

12 MR. LANG: All right. Well, maybe we won't
13 have a PowerPoint.

14 CHAIRPERSON BUSCHING: Well, the projector
15 isn't on.

16 MS. MCGEE: It's warming.

17 MR. LANG: That's the problem.

18 MS. MCGEE: Because we had it up.

19 MR. LANG: I would point out that you have the
20 new handout. The other one had some changes in it, so
21 I'd ask you to look to the new handout and not the one
22 that's in your notebook.

23 The first mailer we're going to look at is the
24 Rios mailer.

25 Can you turn the light back on, please? We'll

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1 turn it down once we actually have something to see on
2 the screen.

3 All right. Well, I'm going to just go ahead
4 and Ms. McGee will work on it. So if we can have the
5 lights back up all the way.

6 The first piece --

7 MS. MCGEE: Up -- there you go.

8 MR. LANG: Oh, thank you.

9 COMMISSIONER JOLLEY: Just had to warm it up.

10 MR. LANG: All right. Thank you. Oh, that's
11 just the controller there.

12 (Whereupon a series of ads are displayed on the
13 projector.)

14 MR. LANG: There we go. Okay. Actually,
15 there's a typo, Commissioners, on the first page. I
16 don't think there's an apostrophe in "Citizens."

17 So, this is the first piece. And you can see
18 it's a two-page piece. On one side is a clear hit on
19 Rebecca and Pete Rios about all the horrible things
20 they're doing to taxpayers.

21 And then on the back is a nice slate talking
22 about how they're helping taxpayers. Very traditional
23 slate piece with the attack on the other side. This is
24 nothing new.

25 So we're recommending matching 50 percent the

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1 side that is criticizing the Rios folks, Pete and
 2 Rebecca Rios. So that will be 25 percent of the total
 3 cost to Rebecca Rios and to Pete Rios. So, that's a
 4 total of \$1,506 to each of them out of the total cost of
 5 \$6,224.
 6 Pretty straightforward. If you have no
 7 questions, I'll move on to the next one.
 8 COMMISSIONER KUNASEK: That's \$1,500 to Pete
 9 and \$1,500 to Rebecca?
 10 MR. LANG: Yeah. And that recommends 25
 11 percent of the total for each of them.
 12 COMMISSIONER KUNASEK: Okay.
 13 MR. LANG: In other words, we split the side in
 14 half basically.
 15 CHAIRPERSON BUSCHING: But if this side didn't
 16 exist --
 17 MR. LANG: This side?
 18 CHAIRPERSON BUSCHING: Yeah, if the side that
 19 says, "The Rios team is no friend to taxpayers," was
 20 just blank and we had the other side was sent out --
 21 MR. LANG: There would be no match.
 22 COMMISSIONER KUNASEK: We wouldn't match at
 23 all.
 24 MR. LANG: Because it fit in-the-slate mailer
 25 exemption.

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1 CHAIRPERSON BUSCHING: Exactly. Okay.
 2 MR. LANG: Sorry for not clarifying that.
 3 Then this is the next Rios hit. This one
 4 is regarding whether or not they really live in the
 5 district and they even have came up with an anagram of
 6 Rios, which is kind of cool, "Residential Inquiry for
 7 Occupancy Status." Whoever gets to do these probably
 8 has some fun with it.
 9 So, you see this is the same thing. It's a hit
 10 on Pete and Rebecca Rios. Same cost. Same breakdown.
 11 25 percent each. And then a slate on the other side
 12 pointing out how they actually live in the district.
 13 Same thing. And, again, on this side with our
 14 broad interpretation of slates, we would not match this
 15 because it's an exemption to the expenditure definition.
 16 COMMISSIONER JOLLEY: I have a question. So,
 17 Rebecca Rios and Pete Rios are related in some way?
 18 MR. LANG: Father and daughter.
 19 COMMISSIONER KUNASEK: Father and daughter.
 20 COMMISSIONER JOLLEY: Oh, okay.
 21 MR. LANG: One is a state senator and the other
 22 is a state representative.
 23 COMMISSIONER KUNASEK: I really question if
 24 telling where a person lives is a hit piece, unless
 25 they're afraid the Mafia is going to go get them or

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1 something.
 2 MR. LANG: Well, the point is this reflects
 3 badly on them.
 4 MS. VARELA: Plus it says, why vote for
 5 someone.
 6 MR. LANG: Why vote for someone that lives
 7 outside our district?
 8 COMMISSIONER KUNASEK: Good question.
 9 MR. LANG: All right. So, those are
 10 straightforward pieces. If you have any other
 11 questions, I'll answer them. Otherwise, I'll move
 12 forward to the next item.
 13 Oh, it's our friends Pete and Rebecca Rios.
 14 And, again, it's a criticism of them. Again, this one
 15 is on the various votes regarding voter issues and it
 16 criticizes both of them for their votes on this page.
 17 This one is sort of integrated and then at the
 18 bottom it says, "Rebecca Rios marched in pro-illegal
 19 immigration rallies."
 20 I don't remember any.
 21 And then on the back it's the same slate.
 22 Again, something we don't match. Very straightforward
 23 again.
 24 And so, again, we matched this side, a hundred
 25 percent of this side, which is 50 percent of the total.

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1 And we broke it down at 50/50 for the two candidates.
 2 And for the folks on the phone, this is, "Pete
 3 and Rebecca Rios refuse to secure our border." Sorry, I
 4 forgot you don't have the agenda PowerPoint there. This
 5 is Agenda Item III(A) -- III(A)(3).
 6 So, again I'm going to move forward on them.
 7 That's it for the Rioses, you want me to move on to
 8 Knaperek?
 9 CHAIRPERSON BUSCHING: Uh-huh.
 10 MR. LANG: Okay. This is the first piece
 11 against Laura Knaperek. Clearly a hit on her. Real
 12 criticism. It even has expressed advocacy, "Vote
 13 against Laura Knaperek." So that's quite
 14 straightforward.
 15 And then this is a positive support piece of
 16 Cahill, and Ableser, and Schapira. This is a
 17 traditional slate. This one is less clear because it's
 18 not lined up nicely like the others, like the Republican
 19 ones were. It prominently features all three of them,
 20 all three of their names at the bottom. And pretty
 21 straightforward there.
 22 So we recommend the match here for Knaperek at
 23 70 percent.
 24 CHAIRPERSON BUSCHING: And explain how you got
 25 to 70 percent.

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1 MR. LANG: Yeah.
 2 COMMISSIONER PARKER: Why are you doing it in
 3 support of?
 4 MR. LANG: Yeah, I -- that's actually
 5 incorrect.
 6 (Whereupon an off-the-record discussion is held
 7 between Mr. Daniel Ruiz and Mr. Todd Lang.)
 8 MR. LANG: Thank you.
 9 Daniel reminds me, there's a very good
 10 reason why this doesn't get the slate exemption, it's
 11 not a slate mailer -- I mean, it's not put out by the
 12 parties.
 13 COMMISSIONER JOLLEY: Who was it put out by?
 14 MR. LANG: It was paid for by Legal
 15 Conservation Voters Committee For the Environment and
 16 not paid for by any candidate or candidate committee in
 17 the fine print. Sorry about that.
 18 And that's why you don't get the slate, because
 19 normally this would be a nice 50/50. She would get 50
 20 percent. But because this doesn't -- this doesn't fit
 21 the exemption, Crutcher gets 12.5 percent because he's
 22 running against Knaperek and Cahill. And Despain gets
 23 25 percent because of the benefitting Schapira and
 24 Ableser.
 25 So you total that up and that's how we came up

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1 If the total matching funds distribution comes
 2 out to \$1,432.39, so you're basing that on \$3,243.12?
 3 MR. LANG: Right. For Knaperek it's \$2,270.
 4 COMMISSIONER JOLLEY: So, okay, the total
 5 distribution of matching funds for all three candidates
 6 will be \$1,242?
 7 MR. LANG: No.
 8 COMMISSIONER JOLLEY: Excuse me, 24.
 9 COMMISSIONER PARKER: 32.
 10 COMMISSIONER KUNASEK: 34.
 11 COMMISSIONER JOLLEY: 34.
 12 CHAIRPERSON BUSCHING: I'm still not --
 13 COMMISSIONER JOLLEY: There's more money being
 14 distributed?
 15 COMMISSIONER PARKER: 34.
 16 COMMISSIONER KUNASEK: \$3,400.
 17 (Whereupon an off-the-record discussion is held
 18 between Mr. Daniel Ruiz and Mr. Todd Lang.)
 19 COMMISSIONER PARKER: I don't understand how we
 20 can match more than what the mailer cost.
 21 MR. LANG: You know what I'd recommend,
 22 Commissioners, we're going to skip this one and come
 23 back to it.
 24 COMMISSIONER JOLLEY: Yeah, it's \$3,486.
 25 MR. LANG: I'm going to ask Daniel to look at

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1 for the 70 percent for her, because it benefits her
 2 opponent as well. Ableser and --
 3 COMMISSIONER PARKER: It adds up to more than a
 4 hundred percent. 70 and 25 and 12-and-a-half.
 5 MR. LANG: Right. Because some of it is --
 6 because some of it benefits -- there's part of it that
 7 benefit two opponents, Schapira and Ableser. They're
 8 both running for state house. So you match for both of
 9 them.
 10 Normally, where you see this is you will see a
 11 piece benefitting Schapira and piece benefitting
 12 Ableser, and we recommend matching for both. In other
 13 words, the opponents get to double-dip in that sense.
 14 So the total is --
 15 COMMISSIONER PARKER: They don't mention the
 16 opponent.
 17 MR. LANG: No, they don't, but they promote the
 18 candidate.
 19 COMMISSIONER PARKER: Crutcher is running for
 20 senate, is that why he --
 21 COMMISSIONER JOLLEY: Well --
 22 MR. LANG: Yes, Crutcher is running for senate.
 23 COMMISSIONER JOLLEY: Well, Todd --
 24 Commissioner Busching -- Chairperson Busching, I just
 25 have a comment.

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1 the numbers and we're going to come back to it. Is that
 2 all right, Madame Chair?
 3 CHAIRPERSON BUSCHING: Yes.
 4 MR. LANG: So let's go on to this one.
 5 This one we already matched purely on the other
 6 side. So what we're asking for permission is to match
 7 this side. You see here there are two ways to deal with
 8 the legal immigration. You have the red carpet or you
 9 have the law enforcement stop thing.
 10 And you -- you see what happens then, we have
 11 the hit on the Republican candidates because they opened
 12 the red carpet for immigration, and law enforcement
 13 supporting the Democrats because they put a stop to it
 14 under this piece.
 15 We don't match the bottom portion of the page
 16 because that is a slate and paid for by the party. We
 17 do recommend matching the top portion of the page
 18 because that's a hit piece and we've traditionally
 19 matched that.
 20 So what we awarded was one-third of one-fourth
 21 of the total document, because this gray part up top is
 22 one-fourth of the total document. It hits on three
 23 candidates, so we divide it by three, and that comes out
 24 to that number 8.33 percent.
 25 But given the fact that this doesn't fit the

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1 definition of slate, this bottom portion, it's my
2 recommendation -- we've not yet matched this, but it's
3 my recommendation that we go ahead and award matching
4 funds for this portion as well because it doesn't fit
5 the slate exemption.

6 CHAIRPERSON BUSCHING: Except that in the past
7 when it hasn't mentioned any candidate, we've just
8 excluded it, haven't we?

9 COMMISSIONER JOLLEY: Uh-huh.

10 MR. LANG: That's certainly something you can
11 do. Especially since the top portion -- we broke this
12 up into four pages. If you break it up to the four
13 pages, the top portion is just blank, it's meaningless,
14 so you ignore that and make it only three pages. So,
15 that's why we're suggesting two-thirds of the total.
16 This is one-third and that gray part is two-thirds if
17 you agree to the recommendation.

18 But that's the reason we didn't issue the check
19 because of that issue you just raised, Madame Chair.
20 But, I would point out, if you go back to 2004 -- and I
21 actually agree with you as a matter of policy, we
22 probably shouldn't be matching this. But if you look at
23 2004, on 10/29/04, there were two slate mailers
24 criticizing Knaperek and Mark Thompson.

25 The first one was this one. You remember this

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1 one, "They want to raise my taxes?" We matched at 50
2 percent. The first two pages were criticisms, the next
3 two pages were slates. We didn't match the slates but
4 we matched this page which was clearly a criticism of
5 Knaperek and Thompson.

6 But we also matched this page which doesn't
7 mention anyone but it's tied into the criticism. You
8 know, the scared woman saying, "They want to raise my
9 taxes?" So that was part of the criticism that it was
10 contained in the rest of the document. "That's right,
11 they want to raise your taxes." And then we tie into
12 the name.

13 So, I think the Commission's theory there was
14 that it's all part of the criticism of Knaperek and
15 Thompson.

16 Then we did it again with the, "Smoke 'em if
17 you got 'em." "Smoke 'em if you got 'em," this sort of
18 piece doesn't criticize anyone, but the Commission
19 matched because thanks to Knaperek, the kid can smoke.
20 So this appears to be tied in and then we didn't match
21 the other two pages because they were slate.

22 Well, this is similar. This sets up the
23 criticism of Knaperek. There's two ways to do it: The
24 friendly corporation with the red carpet or the
25 hard-hitting police office -- law enforcement official

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1 with the note, the stop sign. And then you see the
2 number one up top, the gray color. One in gray ties in
3 with the one in gray here.

4 So that's the choice, one -- the one gray
5 choice or the two red choice. One gray goes with
6 Knaperek or tied in, and two in red goes with the
7 Democrats and it's tied in.

8 And so you -- this is up to the Commission.
9 This is why we didn't go ahead and award the check,
10 because we wanted you to make the decision.

11 Our precedent is, we should award for this, but
12 I agree with you there's really no criticism of anyone
13 there unless you tie it in here.

14 CHAIRPERSON BUSCHING: And has our rulings this
15 time been consistent with the 2004, or have we excluded
16 the page at times this time?

17 MR. LANG: You know, as I recall, it just
18 hasn't come up this starkly where you have something
19 like this, and where you have clear precedent that's
20 identical to it even as going so far with the same
21 candidate with the same party attacking them.

22 So, my recommendation is we stay consistent and
23 we award this page -- this half page as well. Because
24 really we haven't clarified this issue.

25 CHAIRPERSON BUSCHING: Okay.

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1 MR. LANG: Moving on to the next agenda item.

2 COMMISSIONER PARKER: So, Todd, are you saying
3 then that the amount of money is going to stay the same
4 as what you have written on the --

5 MR. LANG: No, it would be increased. It would
6 be increased, because right now what we're awarding is
7 one-third of one-fourth to each candidate.

8 Like, for instance, for Knaperek it's one-third
9 of one-fourth of the total price. If you go with my
10 recommendation, it would be one-third of two-thirds of
11 the total price, which is a much -- it's more than
12 double.

13 COMMISSIONER PARKER: Can you have Daniel run
14 those numbers for us, please, too?

15 MR. LANG: Yeah, he's busy running the numbers
16 from the last piece but we'll ask him to do that.

17 COMMISSIONER PARKER: Because the paper I have
18 has a figure of \$775.34 to be given to them.

19 CHAIRPERSON BUSCHING: That's what we have at
20 this point. So we'll need to --

21 MR. LANG: Yeah, if you go with my
22 recommendation, that would actually be increased -- the
23 new chart has the new number. It's on part five. You
24 don't have the new chart there on the phone, but the new
25 number will be 22.21 percent instead of 8.whatever the

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1 percent is. And that would increase the funding to
 2 \$2,068.20 to the three candidates, \$2,068.20.
 3 CHAIRPERSON BUSCHING: Each?
 4 COMMISSIONER PARKER: That will be all three to
 5 split or for each?
 6 MR. LANG: For each.
 7 COMMISSIONER PARKER: Okay.
 8 MR. LANG: That's a total of a little over
 9 \$6,000 and the total price of the piece was \$9,307.
 10 COMMISSIONER PARKER: Okay. When we figure
 11 cost, do we include postage in that cost?
 12 MR. LANG: Yeah. Everything. Everything they
 13 spend we get, production, mailing, and whatever else
 14 there is.
 15 COMMISSIONER PARKER: Okay.
 16 MR. LANG: Okay. Agenda Item III(C). This one
 17 is a criticism of Amanda Aguirre. It's a two-page
 18 document. I'm sorry about the quality of the program.
 19 This, you know, it looks like the back of a milk box.
 20 But those are the copies we have.
 21 And if you look in -- if you want to look in
 22 your book, you will see the copies in there are no
 23 better.
 24 MR. EHST: That was scanned and e-mailed that's
 25 why.

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1 with the slate issue and the breaking down of the
 2 document. So, that we left to you to decide and so
 3 we're waiting for your instruction on that.
 4 COMMISSIONER PARKER: Is that the only one
 5 you've already issued a check on?
 6 MR. LANG: No. We've also -- that's why you'll
 7 notice on the agenda item says, "ratification." Because
 8 we've also issued the checks in the other cases.
 9 COMMISSIONER PARKER: What would have happened
 10 if we didn't ratify it?
 11 MR. LANG: Then we'd ask for the money back.
 12 COMMISSIONER PARKER: Okay.
 13 MR. LANG: This is only done at the end of the
 14 election cycle where the money -- where the timing is
 15 essential and values are relatively low. We'd never
 16 issue a \$200,000 check this way.
 17 COMMISSIONER PARKER: Okay.
 18 MR. LANG: And we only do it when we're pretty
 19 confident that we're going to agree with this. That's
 20 why, for instance, on this one we didn't issue the
 21 deference with the red carpet and the trooper. We
 22 needed your input on how you wanted us to match.
 23 And then Aguirre, it was straightforward.
 24 Straightforward slate. And we didn't foresee any
 25 disagreement there.

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1 MR. LANG: That's right. It was scanned and
 2 e-mailed and not at a high resolution.
 3 So, you see here this whole piece criticizes
 4 her. Amanda Aguirre on border security issues. And
 5 then it says, "Amanda Aguirre, you're not on our side."
 6 Clearly expressed advocacy against her.
 7 And then the back is a traditional slate.
 8 Although you can't tell, there's actually three people
 9 there. That third person is a person. So, that's the
 10 Republicans there.
 11 And so we recommend a 50 percent match. Pretty
 12 straightforward. So that would be \$3,170.44 for Aguirre
 13 and this was paid for by the Republican Party.
 14 This one has not yet gone out and we've not yet
 15 issued a check, but we were made aware of it so we're
 16 asking for your approval ahead of time.
 17 COMMISSIONER PARKER: Are you saying that you
 18 issued checks already for some people on the list?
 19 MR. LANG: Yeah. Like, for instance, on the
 20 Knaperek one where there's that question of whether you
 21 count the other side, we've issued the check for the
 22 small amount. It was -- I think it was \$700.
 23 So, what we didn't issue, because we knew it
 24 was -- because we knew that would be matched no matter
 25 what. But what we didn't know is how you would deal

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1 And then here's (D). This one has not gone
 2 out. This is a two-sided piece that is actually
 3 intended to be folded. "Wanted for failed
 4 representation, abuse of power, and corruption.
 5 Bringing Arizonan's seven most wanted to justice." And
 6 this is not paid for by the Democratic party.
 7 COMMISSIONER PARKER: Says major funding
 8 provided by the Arizona Democratic --
 9 MR. LANG: Yeah, but by Arizona Values
 10 Coalition, so the slate exemption doesn't apply. It's
 11 an independent expenditure committee.
 12 All right. The good thing about independent
 13 expenditure committees is they're -- they're -- you
 14 don't get the slate exemption -- I think Mr. Maddox
 15 referred to that in his last presentation -- so you can
 16 match the whole thing, which in many ways is fair. But
 17 on the other hand, if there's -- it dodges coordination
 18 issues that might be present otherwise. So in a sense,
 19 it inoculates the parties. So maybe it's a good thing
 20 all around.
 21 But here you have the piece which is clearly a
 22 criticism of someone. You don't know whom yet. And
 23 then you go on the back and there they are: Russell
 24 Pierce, Bill Montgomery, Steve Yarbrough, David
 25 Peterson -- when is he resigning?

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1 COMMISSIONER KUNASEK: He did already.
 2 MR. EHST: December 1st.
 3 MS. VARELA: December 1st.
 4 MR. LANG: So he resigned yesterday, so --
 5 MS. VARELA: No. A month from now.
 6 MR. EHST: December 1st.
 7 MR. LANG: Oh, December 1st. A whole entire
 8 month.
 9 Speaker Jim Weiers. So, it's clearly
 10 critical of them. It's clearly expressed advocacy
 11 against them. And we would like your permission to
 12 match those candidates who are -- who are participating
 13 candidates.
 14 MS. VARELA: If this get sent.
 15 MR. LANG: If this gets mailed. And that's the
 16 key thing, if it comes to -- as you know, this is an
 17 important point for everyone. When -- when a candidate
 18 buys a sign or a piece, he has to -- he has to report
 19 that expenditure at the time the commitment is made,
 20 even though it hasn't been sent out. But with
 21 independent expenditure committees, we only match when
 22 the communication has occurred when it actually has been
 23 sent out.
 24 And the reason for the difference is, because
 25 under 16-901.01 the definition of expressed advocacy

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1 expenditure. But we would like permission to match this
 2 amount and whatever postage they report.
 3 That's in a rate of one-seventh of the total
 4 cost, because there's seven folks being picked on.
 5 COMMISSIONER PARKER: Who are they going to
 6 mail it to? Because \$1,600 isn't going to mail it to
 7 very many people.
 8 MR. LANG: Well, the \$1,600 is only the cost of
 9 putting it together. That doesn't include mail. What
 10 we ask is your permission to give one-seventh of the
 11 total cost, including mailing once that number is known.
 12 COMMISSIONER PARKER: I see.
 13 COMMISSIONER KUNASEK: But that's only if it
 14 gets mailed?
 15 MR. LANG: That's right. If it doesn't get
 16 mailed, we're not matching a penny -- unless you direct
 17 us otherwise.
 18 CHAIRPERSON BUSCHING: Are all these
 19 participating candidates?
 20 MR. LANG: No, only Len Munsil, Russ Jones, and
 21 Bill Montgomery are participating candidates. So those
 22 are the only three we would match.
 23 COMMISSIONER PARKER: What if it doesn't get
 24 mailed until, like, two days before the election?
 25 MR. LANG: We're almost there. We are about

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1 requires communication on a mass basis. And if there's
 2 no communication, there's no independent expenditure
 3 requiring matching.
 4 So that's why these aren't matching until after
 5 they are mailed. And that's why we're asking for your
 6 permission to match these ahead of time because we
 7 anticipate it being mailed.
 8 COMMISSIONER JOLLEY: Yes, I have a question.
 9 MR. LANG: But we will not match unless it is
 10 mailed.
 11 CHAIRPERSON BUSCHING: Commissioner Jolley?
 12 COMMISSIONER JOLLEY: Todd, so how did you come
 13 about receiving this or this being sent to you?
 14 MR. LANG: You know, I don't recall. I assume
 15 the Munsil folks did.
 16 COMMISSIONER JOLLEY: Excuse me?
 17 MR. LANG: We know the PAC sent it, but how did
 18 we find out about it?
 19 MR. RUIZ: They disclosed it.
 20 MR. LANG: Oh, imagine that. They disclosed it
 21 to us. The PAC disclosed it to us, the Arizona Values
 22 Coalition. We didn't even ask, which is very nice.
 23 So we would like your permission to match each
 24 of them. The amount of matching, as you can see there,
 25 doesn't include postage because it's not yet been

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1 there.
 2 COMMISSIONER PARKER: Exactly.
 3 MR. LANG: We expect it will be mailed this
 4 weekend. And once we've learned that --
 5 COMMISSIONER PARKER: How are they going to use
 6 the money we give them?
 7 MR. LANG: We'll give them permission to spend
 8 it as soon as the check is approved. So, they'll be
 9 able to spend it over the weekend or certainly on
 10 Monday.
 11 COMMISSIONER PARKER: The election is Tuesday.
 12 MR. LANG: That's right. It's not really
 13 helpful but that's the best we can do.
 14 COMMISSIONER KUNASEK: Informational question.
 15 Would we send one, for example, to David Peterson since
 16 he's resigned and as I understand it is not running for
 17 reelection?
 18 MR. LANG: No. And thank you, Commissioner
 19 Kunasek. We're only matching for the participating
 20 candidates, so that would be Munsil, Russ Jones, and
 21 Bill Montgomery.
 22 COMMISSIONER KUNASEK: Okay.
 23 COMMISSIONER JOLLEY: Well, I have another
 24 question.
 25 So, Todd, how would they spend the money, maybe

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1 on radio ads, or television, or their discretion?
 2 MR. LANG: Telephone calls. Radio ads.
 3 CHAIRPERSON BUSCHING: To their discretion,
 4 okay.
 5 MR. LANG: Telephone calls are relatively
 6 cheap, the autodialers.
 7 COMMISSIONER JOLLEY: Oh, okay.
 8 MR. LANG: So, there's a lot of things they can
 9 do on Monday, get-out-the-vote kind of thing. I'm sure
 10 the Munsil folks will tell us they'll put it to good
 11 use.
 12 COMMISSIONER JOLLEY: Okay.
 13 MR. LANG: Our staff has corrected my errors
 14 and figured it all out, and so I'll go back to that
 15 agenda item. This one.
 16 COMMISSIONER JOLLEY: Which is?
 17 MR. LANG: Commissioners on the phone, it's
 18 III(B)(1). It's the color print of the crying child and
 19 the grade of an "F" for Laura Knaperek. Then the back
 20 is an endorsement of Cahill, Ableser, and Schapira.
 21 Okay?
 22 And the way the numbers work out, this is
 23 clearly 50 percent goes to Knaperek. It's criticism of
 24 her, nothing else. So 50 percent of the total cost goes
 25 to her right there.

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1 four-sixths for her. And one-sixths for the other two
 2 candidates, which equals six-sixths.
 3 So, luckily we have a couple math
 4 whizzes.
 5 And that -- this -- unless you have questions,
 6 that's -- that's it for this agenda item.
 7 COMMISSIONER KUNASEK: So, at Knaperek, it's
 8 actually two-thirds of this total and the other third
 9 get one-sixths of each of the total?
 10 MR. LANG: Right. The other two split
 11 one-third.
 12 And, again, this doesn't fit the slate
 13 exemption. This is the one that was mailed by
 14 Conservation Voters, not by the parties. That's why the
 15 slate exemption doesn't apply. Otherwise, this would
 16 just be a 50/50 piece like the -- like the other ones we
 17 saw with Rios and Aguirre. Okay?
 18 CHAIRPERSON BUSCHING: And I might note that
 19 this is District 17 and there's two people running for
 20 state senator, one to be chosen of course, and four
 21 people running for state representative, and two people
 22 to be chosen. And all six of them are participating
 23 candidates.
 24 MR. LANG: That's correct.
 25 CHAIRPERSON BUSCHING: Okay. Okay. Can I --

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1 And then this side is split down three ways:
 2 Schapira, Cahill, and Ableser. So they would each get
 3 one-third of the value of that side. So the total
 4 amount I'm recommending is one-third of that side for
 5 Knaperek, plus the total of the other side for Knaperek,
 6 which is a total of \$2,162 for her. And then \$540.52
 7 for Despain and for Crutcher.
 8 Thank you, David -- Eric.
 9 So, \$540 for Despain and Crutcher and \$2,162
 10 for Knaperek. And that total when you add those numbers
 11 up, that equals the amount of the expenditure \$3,243.12.
 12 CHAIRPERSON BUSCHING: And the percentages are
 13 what?
 14 MR. LANG: It's 50 percent for Knaperek, plus
 15 33 percent -- it's 50 percent of half for Knaperek, plus
 16 33 percent of half. And then 33 percent of half for the
 17 other two.
 18 (Whereupon an off-the-record discussion is held
 19 between Mr. Eric Peterson and Mr. Todd Lang.)
 20 MR. LANG: Eric points out another way to do
 21 the math. Treat the whole thing as sixths. Well,
 22 obviously, this side is three-sixths. So Knaperek gets
 23 three-sixths for that. And she gets -- because she gets
 24 one-third of half, that's one-sixth. So she gets
 25 one-sixth for that of this side. So total of

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1 thank you.
 2 Are there any questions of Mr. Lang?
 3 Is there anyone from the public that wishes to
 4 speak to these matters?
 5 MR. MADDOX: Very briefly.
 6 CHAIRPERSON BUSCHING: Okay.
 7 MR. MADDOX: Madame Commissioner, David Maddox
 8 for the Munsil Campaign.
 9 Just on the last one which we had not seen
 10 before today, we would just ask the Commission to
 11 consider that there are only three people on that list
 12 that are participating candidates and you only divide it
 13 a third, a third, and third rather than one-seventh.
 14 These are the ones being hurt by it and qualified. And
 15 they're the ones you are looking at.
 16 So I would ask you to consider consideration
 17 based on the ones that are participating candidates.
 18 Again, we hadn't seen it before. Thank you.
 19 CHAIRPERSON BUSCHING: Thank you.
 20 MR. DRURY: Doug Drury also for the Len Munsil
 21 campaign.
 22 Also one other thing on that mailer --
 23 thanks -- is that my -- since we didn't have knowledge
 24 of this and didn't have a chance to look at them, I know
 25 Mr. Peterson is not a candidate for anything and looks

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1 like everyone else is a candidate for something; is that
2 right, Todd?

3 MR. LANG: Yes.

4 MR. DRURY: So, you know, at worse it should be
5 one-sixth instead of one-seventh. Otherwise IE groups
6 could dilute the impact of these kind of things by
7 putting people who aren't candidates, for example,
8 President Bush or somebody else and saying, you know,
9 President Bush is one of the most wanted and Senator
10 McCain, and say, okay, you get one-ninth because it's
11 nine different people. So it should be one-third or at
12 worst one-sixth applying to actual candidates. Thank
13 you.

14 CHAIRPERSON BUSCHING: Thank you.

15 MR. BAILEY: And just to make sure that the
16 Munsil Campaign isn't left out in my part -- I'm Mike
17 Bailey.

18 CHAIRPERSON BUSCHING: Sir, will you come
19 forward and state your name?

20 MR. BAILEY: Yes.

21 CHAIRPERSON BUSCHING: But there was another
22 gentleman that had stood up first, so would you let him
23 speak first?

24 MR. BAILEY: Sure. I just had a joke anyway,
25 so --

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1 CHAIRPERSON BUSCHING: Thank you.

2 MR. CORBELL: I'm Phil Corbell. I'm just a
3 citizen.

4 And I'm going to reiterate what I heard in my
5 little notes. While I saw the piece up there, I
6 thought, this is going to set a great precedent for PACs
7 to come out and send out a hit piece with 100 names on
8 it, former legislatures, people that have died 50 years
9 ago, or whatever. The thing is, with a hundred people
10 on a hit piece, two of them are Clean Elections'
11 Candidates, let's throw in three traditional candidates
12 to mess up everything, and then you've got 95
13 non-candidates.

14 To give the two Clean Elections' Candidate
15 one-one hundredth of the cost of that piece to respond
16 statewide would be totally unfair and doesn't make sense
17 as far as Clean Elections goes and leveling the playing
18 field.

19 So, in particular, I think that -- I do support
20 Clean Elections and I do believe whenever Clean
21 Elections' Candidates are hit, that they ought to be the
22 only ones considered on any piece. Traditional
23 candidates can raise all the money in the world and
24 non-candidates shouldn't be considered at all. Thank
25 you.

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1 CHAIRPERSON BUSCHING: Thank you, sir.

2 Is there anyone else from the public that
3 wishes to speak? Did you --

4 MR. BAILEY: Madame Chair, I was just going to
5 respond to Commissioner Jolley.

6 CHAIRPERSON BUSCHING: Please state your name.

7 MR. BAILEY: Mike Bailey. I was going to
8 respond to Commissioner Jolley's earlier question about
9 the use of the funds at the last minute and only assure
10 you that we would not buy a margarita machine.

11 COMMISSIONER JOLLEY: Thank you.

12 CHAIRPERSON BUSCHING: Thank you.

13 Anyone else from the public wish to
14 speak?

15 If not, Mr. Lang, I think I'll have you
16 summarize as we address each individual item.

17 MR. LANG: Okay. Where do you want to go back
18 to, the beginning?

19 CHAIRPERSON BUSCHING: So, we'll go back to
20 Item III(A) -- (A)(1), the, "No friend to taxpayers"
21 item, which is this one. And if there is any -- is
22 there any further discussion? Or, if not, the Chair
23 will entertain a motion.

24 COMMISSIONER PARKER: I move that --

25 CHAIRPERSON BUSCHING: I'm sorry?

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1 COMMISSIONER PARKER: I was -- I was going to
2 move that we match the \$1,556 to Pete and Rebecca Rios.

3 COMMISSIONER KUNASEK: Second.

4 CHAIRPERSON BUSCHING: It's been moved by
5 Commissioner Parker and seconded by Commissioner Kunasek
6 that we issue \$1,556 each to Pete Rios and Rebecca Rios.
7 Any further discussion?

8 Mr. Lang?

9 MR. LANG: Madame Chair, just for
10 clarification, this is ratification of the issuance of
11 that money.

12 CHAIRPERSON BUSCHING: Okay. Commissioner
13 Kunasek?

14 COMMISSIONER KUNASEK: Well, I would -- as the
15 second, I would agree to change the word from "an award"
16 to "ratification".

17 CHAIRPERSON BUSCHING: And Commissioner Parker,
18 you're agreeable as well?

19 COMMISSIONER PARKER: Yes, ma'am.

20 CHAIRPERSON BUSCHING: Okay. Chair will call
21 for the question, all in favor say, "aye."

22 (Chorus of ayes.)

23 CHAIRPERSON BUSCHING: Opposed, nay?

24 Commissioner -- Commissioner Scaramazzo, are
25 you there?

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1 COMMISSIONER SCARAMAZZO: Aye.
 2 CHAIRPERSON BUSCHING: I'm sorry?
 3 COMMISSIONER SCARAMAZZO: Aye.
 4 CHAIRPERSON BUSCHING: Okay. Chair votes aye.
 5 Motion carries.
 6 Item (A)(2). Mr. Lang, any further
 7 thoughts?
 8 MR. LANG: No. It's a straightforward 50/50
 9 piece. And, again, we recommend \$1,556 -- we awarded
 10 \$1,556 to each Pete Rios and Rebecca Rios and would like
 11 you to ratify that decision.
 12 CHAIRPERSON BUSCHING: Okay. Any further
 13 discussion or a motion?
 14 COMMISSIONER KUNASEK: I would move the
 15 ratification of the award.
 16 COMMISSIONER PARKER: Second.
 17 CHAIRPERSON BUSCHING: It's been moved by
 18 Commissioner Kunasek and seconded by Commissioner Parker
 19 that we ratify the award to Pete Rios and Rebecca Rios
 20 for Item (A)(2). All in favor say, "aye."
 21 (Chorus of ayes.)
 22 CHAIRPERSON BUSCHING: Opposed, nay?
 23 Chair votes aye. Motion carries.
 24 Item (A)(3). Mr. Lang?
 25 MR. LANG: Similar piece. Again, an attack on

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1 Pete and Rebecca Rios on one side and the slate on the
 2 other side. We issued matching funds for only the hit
 3 side. And, again, that's \$1,556 to Pete Rios and \$1,556
 4 to Rebecca Rios and we would like you to ratify that
 5 decision.
 6 CHAIRPERSON BUSCHING: Okay. Any discussion or
 7 a motion?
 8 Commissioner Scaramazzo?
 9 COMMISSIONER SCARAMAZZO: Yes. I move to
 10 ratify.
 11 COMMISSIONER KUNASEK: Second.
 12 CHAIRPERSON BUSCHING: It's been moved by
 13 Commissioner Scaramazzo and seconded by Commissioner
 14 Kunasek that we ratify the staff's issuance of \$1,556 to
 15 Pete Rios and Rebecca Rios for the, "Refuse to secure
 16 our border mailer." All in favor say, "aye."
 17 (Chorus of ayes.)
 18 CHAIRPERSON BUSCHING: Opposed, nay?
 19 Chair votes aye. Motion carries.
 20 Item (B)(1). Mr. Lang?
 21 MR. LANG: This is the one where I had a little
 22 trouble with my math.
 23 Here we've only given \$775 to each candidate --
 24 no, that's not right. How much have we already given
 25 them?

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1 COMMISSIONER JOLLEY: \$540.52.
 2 (Whereupon an off-the-record discussion is held
 3 between Mr. Daniel Ruiz and Mr. Todd Lang.)
 4 CHAIRPERSON BUSCHING: This is the one
 5 regarding Knaperek that has the small child and the
 6 grade card on it.
 7 MR. LANG: Okay. All right. What we'd like
 8 you to do is approve the award of \$2,162 to Laura
 9 Knaperek and \$500 --
 10 COMMISSIONER JOLLEY: \$40.
 11 COMMISSIONER KUNASEK: \$40.
 12 MR. LANG: \$540.52 to Crutcher and \$540.52 to
 13 Despain. Thank you.
 14 CHAIRPERSON BUSCHING: Okay. Any further
 15 discussion or a motion?
 16 Commissioner Jolley?
 17 COMMISSIONER JOLLEY: Yes. I will make a
 18 motion to distribute matching funds to the three
 19 candidates per Todd's recommendation.
 20 COMMISSIONER KUNASEK: Second.
 21 CHAIRPERSON BUSCHING: It's been moved my
 22 Commissioner Jolley and seconded by Commissioner Kunasek
 23 that we approve matching funds of \$2,162 to Laura
 24 Knaperek and \$540 each to Dale Despain and Rose Crutcher
 25 with respect to the small child and grade card piece.

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1 All in favor say, "aye."
 2 (Chorus of ayes.)
 3 CHAIRPERSON BUSCHING: Opposed, nay?
 4 Chair votes aye. Commissioner
 5 Scaramazzo, I didn't hear your vote.
 6 COMMISSIONER SCARAMAZZO: It's an "aye."
 7 CHAIRPERSON BUSCHING: Thank you.
 8 MR. LANG: I think his cell phone must cut off
 9 when he speaks quickly.
 10 CHAIRPERSON BUSCHING: Next item is Item
 11 (B)(2). It's the two ways to deal with illegal
 12 immigration mailer.
 13 Mr. Lang?
 14 MR. LANG: This is the one where we already
 15 awarded based on 8.33 percent. And I've asked for your
 16 permission to award based on -- that's basically
 17 one-third of one-fourth, which isn't a great deal of
 18 money.
 19 So what I'm asking for your permission to do is
 20 issue another check to make up the difference, to
 21 increase it from one-third of one-fourth to one-third of
 22 two-thirds. Or, if you decide to include the white
 23 page, it would be three-fourths. One-third of
 24 three-fourths. But my recommendation is one-third -- I
 25 mean two-thirds -- oh. Gosh.

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1 COMMISSIONER JOLLEY: It's one-fourth. Yeah.
 2 COMMISSIONER PARKER: One-third of two-thirds.
 3 COMMISSIONER JOLLEY: Yeah, one-third of
 4 two-thirds.
 5 MR. LANG: Thank you, everyone. Everyone in
 6 the room had it but me. One-third of two-thirds.
 7 CHAIRPERSON BUSCHING: Okay.
 8 COMMISSIONER PARKER: I'd make a motion that we
 9 do that.
 10 CHAIRPERSON BUSCHING: Is there a second?
 11 COMMISSIONER JOLLEY: I'll second that.
 12 CHAIRPERSON BUSCHING: It's been moved by
 13 Commissioner Parker and seconded by Commissioner Jolley
 14 that we approve one-third of two-thirds of the total
 15 price to Knaperek, Despain, and Crutcher -- each of
 16 them -- with respect to the two ways to deal with
 17 illegal immigration mailer. Any further discussion?
 18 If not, the Chair will call for the question,
 19 all in favor say, "aye."
 20 (Chorus of ayes.)
 21 CHAIRPERSON BUSCHING: Opposed, nay?
 22 Chair votes aye. Motion carries.
 23 Next item is the Amanda Aguirre mailer.
 24 Todd?
 25 MR. LANG: Thank you, Madame Chair. This is a

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1 straightforward match of 50 percent of the total cost,
 2 because the one side is a hit on her and the other side
 3 is a traditional slate as best as I can tell.
 4 CHAIRPERSON BUSCHING: Any discussion or a
 5 motion?
 6 COMMISSIONER KUNASEK: Chair, I approve -- I
 7 move that we approve the matching funds in the amount of
 8 \$3,170.43 to Amanda Aguirre for whatever this is --
 9 III(C).
 10 COMMISSIONER JOLLEY: I'll second that.
 11 CHAIRPERSON BUSCHING: It's been moved by
 12 Commissioner Kunasek and seconded by Commissioner Jolley
 13 that we approve staff's recommendation with respect to
 14 Item III(C). All in favor say, "aye."
 15 (Chorus of ayes.)
 16 CHAIRPERSON BUSCHING: Opposed, nay?
 17 Chair votes aye. Motion carries.
 18 The next item is Item III(D). It's the
 19 "Wanted" mailer.
 20 Mr. Lang?
 21 MR. LANG: Thank you, Madame Chair. We request
 22 -- this has not, as I remind you, this one has not yet
 23 been mailed. If it is mailed and thus becomes
 24 communication, we ask for approval to match the total
 25 value of the piece which includes the cost of the

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1 production which you see there was \$1,654 plus any
 2 postage divided by one-seventh. And I stand by that
 3 recommendation because that's the number of folks who
 4 are criticized.
 5 And as to the points raised, I understand those
 6 points. You could have a mailer with a hundred people
 7 in the legislature in order to dilute the amount of
 8 matching funds to the participating candidates. But, of
 9 course, the message would be diluted as well. You would
 10 be lucky to find the participating candidates in the
 11 mess of a hundred people.
 12 To the extent here while this is clearly
 13 criticism of three participating, but the fact remains
 14 it's also criticism of others. So the anti-message is
 15 diluted as it refers to each in respect to each
 16 candidate.
 17 Plus, it's how we've done it in every slate,
 18 this happens to be a slate with a lot more people. And
 19 so I stand by the recommendation that we award
 20 one-seventh of whatever the total value as soon as we
 21 learn that it has been mailed.
 22 CHAIRPERSON BUSCHING: Well -- Commissioner
 23 Kunasek?
 24 COMMISSIONER KUNASEK: Well, I -- I understand
 25 your logic and where you were coming from -- where you

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1 have come from. But I do now having heard some of the
 2 comments, particularly the gentleman that doesn't have a
 3 horse in this race. I guess that it would be possible
 4 to, you know, put the phone book out and have that then
 5 considered to be a slate and have whatever award might
 6 be considered diluted by the number of names.
 7 And perhaps we should revisit this to
 8 understand either there are -- whether they are a
 9 legitimate candidate or not; and then the next step
 10 would be, are they a participating candidate.
 11 COMMISSIONER PARKER: Yep.
 12 COMMISSIONER KUNASEK: In the case here, we
 13 know that at least one is not a legitimate candidate.
 14 MR. LANG: That's true.
 15 COMMISSIONER KUNASEK: So, I guess I'm a little
 16 undecided as to which way I would like to go on this.
 17 CHAIRPERSON BUSCHING: Commissioner Parker?
 18 COMMISSIONER PARKER: Yes. The comment I have
 19 is that there's only one statewide candidate on their
 20 "Wanted" list. And my question is, if they were mailing
 21 this list only to the districts of Mr. Pierce,
 22 Montgomery, Yarbrough, Jones, and Weiers as opposed to a
 23 statewide mailing, I think that influence how we would
 24 divide it up.
 25 Because if it's mailed to statewide, Mr. Munsil

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1 would have the most to lose, so to speak. And those
2 other candidates would only -- you know, somebody in
3 Navajo County wouldn't care what Mr. Pierce did
4 necessarily.

5 So, I tend to think we should probably divide
6 it by thirds because of the possible impact of a
7 statewide mailing.

8 MR. LANG: Madame Chair, may I address that?

9 CHAIRPERSON BUSCHING: Yes, Executive Director
10 Lang.

11 MR. LANG: I need that title today the way I
12 messed up on the math.

13 She's correct. We don't know who this is going
14 to be mailed to. And, of course, that will determine
15 whether it's expressed advocacy against any particular
16 person and whether matching funds are due.

17 If it was only mailed to, say, Yarbrough's
18 district or Jones' district, then we would only issue
19 matching funds to those candidates. I think we'd have
20 an argument with the Len Munsil folks or the Montgomery
21 folks because those are the two statewide candidates on
22 this piece whether it's targeted to the electorate. And
23 that's something we would have to go back before the
24 Commission to do.

25 So what we can do is, you can give me

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1 permission to match if it's a statewide piece a certain
2 amount. You can give me permission to match if it's a
3 local piece a certain amount. But I think your attorney
4 will tell you you need to reconsider this if it's
5 anything but statewide.

6 It is problematic, but my interest is to avoid
7 game playing as much as possible. Now, we know that if
8 I were a campaign manager I would do it too. But as
9 much as we can, we need to issue matching funds so
10 people have an opportunity to respond to criticism. And
11 if we wait for another Commission meeting, that
12 opportunity may be lost or at least diminished.

13 So I do request permission to issue matching
14 funds based on whatever -- however the mailing is done
15 and not to wait.

16 And, again, I stand by my point about -- if
17 two, you know, if 200 people were listed on this piece,
18 it would be a completely ineffective piece. And so I
19 think this is less effective with all seven of these
20 guys, than a piece just criticizes, say, Len Munsil or
21 just Bill Montgomery.

22 Although, arguably to raise their point,
23 putting David Peterson on here is smart strategy by
24 whoever did this, because it sort of paints the other
25 folks with the same brush that he's one of them and he's

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1 resigned from office in disgrace. And so that -- may
2 want to all be painted with that.

3 So there is an argument to be made for their
4 position. But, ultimately, I think each candidate is
5 one-seventh of the piece and should be awarded
6 accordingly.

7 The other point I'd make is look at Russ Jones.
8 He's a participating candidate but he's been maxed out,
9 so he's not getting matching funds. So, should we now
10 only divide by two? Should it only be Montgomery and
11 Munsil because they're the only two participating
12 candidates that can receive money?

13 I think the answer is, no. I think you divide
14 it the way we do with all slates with the number of
15 people on there. I think there is an argument though, I
16 understand the point with David Peterson though. I do
17 stand by my recommendation but I do understand that
18 point.

19 CHAIRPERSON BUSCHING: Mr. Lang, I have a
20 question of context. If this was not a year with
21 statewide -- statewide races and this mailer was going
22 out and was showing a statewide officeholder on here, it
23 would have the same impact, but would you in that case
24 still divide by, say, one-seventh?

25 MR. LANG: You know, this is the first time

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1 this has come up, so the Peterson thing is new. I think
2 I would just based on how we've done slate, but it's an
3 interesting question. We need to, you know, get
4 guidance from the Commission on that. If you don't want
5 us to include, in this case David Peterson, we won't in
6 the future. But that's how we've done it. I don't
7 think I've ever seen a mailer that includes people who
8 weren't candidates.

9 CHAIRPERSON BUSCHING: I agree with you, I
10 don't recall ever seeing a mailer with people who aren't
11 candidates certainly. We certainly have plenty of
12 mailers where there's pictures of people in them other
13 than candidates, but not where we have an officeholder
14 who is not actually running for office at the time that
15 the mailer goes out.

16 I guess my sense is --

17 MR. LANG: Madame Chair?

18 CHAIRPERSON BUSCHING: Mr. Lang?

19 MR. LANG: I apologize for interrupting. Eric
20 Peterson points out that 16-952(C)(6), the statute says:
21 "Expenditures for or against a participating candidate
22 promoting or opposing more than one candidate who are
23 not running for the same office shall be allocated by
24 the Commission among candidates for different office
25 based on the relative size or length of the relative

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1 comment."

2 In other words, the way we normally do it.

3 Break it down on how prominent they are and how featured

4 they are. But, remember what the word says,

5 "Candidates."

6 So, I think we have our answer. I think Eric's

7 citation actually supports the gentleman who said we

8 shouldn't count Peterson. I think that was Doug Drury.

9 And so we shouldn't count Peterson because he is not a

10 candidate. So, it should be one-sixth.

11 So, I change my recommendation based on the

12 statute.

13 CHAIRPERSON BUSCHING: Okay. Commissioner

14 Jolley?

15 COMMISSIONER JOLLEY: So, what you're saying is

16 that we would issue independent expenditure for the

17 mailing piece plus postage. That means if only 200

18 households received for Russ Jones in Yuma County, he

19 would only receive that portion plus the postage. And

20 Len Munsil could go statewide, maybe 50,000. So that's

21 how you would come up with the postage?

22 COMMISSIONER PARKER: No.

23 COMMISSIONER JOLLEY: No?

24 COMMISSIONER PARKER: If they're going to do

25 mailing statewide, it's going to hit Yuma, and Navajo

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1 County, and Pima County all at the same time.

2 COMMISSIONER JOLLEY: Okay. Okay.

3 COMMISSIONER PARKER: So there's not postage

4 going to Yuma County, you know what I'm saying?

5 COMMISSIONER JOLLEY: Yes, I understand.

6 Why would they send a hit piece on Russ

7 Jones statewide?

8 COMMISSIONER PARKER: They have one giant

9 printed piece, so that's why I think we need to assume

10 it's going to be statewide mailer if it's going to be

11 mailed at all.

12 COMMISSIONER JOLLEY: Okay.

13 COMMISSIONER PARKER: If you have two statewide

14 candidates, it would be kind of foolish to not send it

15 statewide and only do, what, only three legislative

16 districts.

17 COMMISSIONER JOLLEY: Yeah, I understand that.

18 I thought maybe they would reduce the number of mailings

19 to the legislative districts.

20 COMMISSIONER PARKER: I think they would

21 calculate the postage based on the number of pieces that

22 were actually mailed to those various districts --

23 COMMISSIONER JOLLEY: Okay.

24 COMMISSIONER PARKER: -- based on whatever

25 voter lists they have.

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1 COMMISSIONER JOLLEY: Okay.

2 COMMISSIONER PARKER: But as far as statewide,

3 I think they go by the state would be my understanding.

4 I could be wrong.

5 COMMISSIONER JOLLEY: So, it's not

6 proportioned? There's not a ratio?

7 CHAIRPERSON BUSCHING: I'm confused, yes.

8 COMMISSIONER KUNASEK: Postage to Yuma County

9 is the same as postage --

10 COMMISSIONER JOLLEY: Oh, I know. But I'm

11 thinking about, like, there's segment --

12 COMMISSIONER KUNASEK: You're --

13 COMMISSIONER JOLLEY: -- there's 20,000

14 registered voters versus statewide for the Munsil

15 Campaign.

16 CHAIRPERSON BUSCHING: Mr. Lang?

17 MR. LANG: I thought this was pretty

18 straightforward. But the issue that Commissioner Parker

19 rose about where it's mailed throws a wrench in it.

20 I think an argument can be made under the

21 statute that where it's mailed doesn't matter. You look

22 to who's featured and who is not featured under the

23 statute. But I think we need legal advice on that. I

24 think our Assistant AG needs to look into that.

25 I would like, though, if it's mailed statewide,

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1 permission to match at one-sixth. And then if it's

2 mailed otherwise we're going to need to meet on Monday

3 morning. We're going to have other things to do on

4 Monday morning anyway, because I'm assuming lots of

5 matching funds requests.

6 We don't have an agenda for Friday, so the next

7 meeting won't be until Monday. The reason why there

8 isn't an agenda for Friday is because we haven't

9 received any matching funds issued. And we have to give

10 24-hour notice. So that's why we -- I mean, that may

11 change this afternoon. But right now that's where we

12 are.

13 So my suggestion is we have two meetings on

14 Monday, one in the morning and then tentatively one in

15 the afternoon for last-minute matching funds. And we

16 consider this Monday morning if it's anything but

17 statewide.

18 CHAIRPERSON BUSCHING: All right.

19 COMMISSIONER PARKER: Todd?

20 CHAIRPERSON BUSCHING: Commissioner Parker?

21 COMMISSIONER PARKER: Thank you. Todd, I -- I

22 -- if this goes out statewide and we don't do anything

23 until Monday morning, that really is a disservice for

24 the candidates who are disputing this.

25 MR. LANG: I agree. That's why I recommend you

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1 give me permission to issue matching funds if it does go
 2 statewide.
 3 COMMISSIONER PARKER: When will we know if it
 4 does go statewide?
 5 MR. LANG: As soon as they mail it.
 6 MS. VARELA: When they mail it.
 7 MR. LANG: We found that the Arizona
 8 Conservative Trust and the Arizona Values Coalition have
 9 been cooperative and I don't see that changing. So we
 10 anticipate that when -- when we hear it's been mailed
 11 and we call them, they will give us the straight scope.
 12 They've been truthful with us throughout this, so I
 13 don't imagine that will change.
 14 CHAIRPERSON BUSCHING: Other discussion or
 15 questions?
 16 I understand, Mr. Lang, your desires and
 17 concerns, but I think that there's too many unanswered
 18 questions right now and I'm not in favor of approving
 19 matching funds until we have more certainty on this.
 20 MR. LANG: Diana would agree with you on that.
 21 CHAIRPERSON BUSCHING: So, any other
 22 discussion?
 23 COMMISSIONER PARKER: Is there any possibility
 24 of contacting the Values Coalition today to find out
 25 what their intent is?

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1 Munsil to? That will be coordinated. That would be an
 2 in-kind contribution, not an independent expenditure and
 3 we do not issue matching funds. Instead, we do an
 4 enforcement for the in-kind contribution.
 5 These two cases involve situations where I
 6 recommended to the Commission that they issue matching
 7 funds and you have, in fact, issued matching funds.
 8 They both involve very small amounts of less than a
 9 thousand dollars and they both involve Web ads.
 10 And so that's the background for you. Because
 11 in both cases certain folks were participating in these
 12 expenditures, and because of their participation it
 13 raised the issue of coordination.
 14 On the first one, MUR 0023, this is a complaint
 15 filed by Andy Gordon on behalf of the Napolitano
 16 Campaign against Len Munsil -- the Len Munsil Campaign
 17 alleging a violation due to this coordination. There
 18 was a Web ad critical of the Governor and which clearly
 19 was expressed advocacy advocating her defeat.
 20 You already reviewed that ad. We played it for
 21 you here at a Commission meeting. That was the 9/11 ad
 22 that you recall was quite critical of the Governor.
 23 The issue though before you today is the issue
 24 of coordination between the Arizona GOP and the Munsil
 25 Campaign. And that coordination is -- the evidence of

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1 MR. LANG: Sure. We can call.
 2 CHAIRPERSON BUSCHING: And even perhaps just
 3 deferring this item on the agenda and -- and having
 4 staff call them while we address the other agenda items
 5 and take this up if we can get an answer.
 6 MR. LANG: Okay. That's a good idea.
 7 CHAIRPERSON BUSCHING: All right. Then we'll
 8 defer Item III(D) and put it at the end of the agenda
 9 and take up Item IV, discussion and possible action on
 10 the following enforcement matters: A) MUR 06-00023, Len
 11 Munsil, reason to believe.
 12 Mr. Lang?
 13 MR. LANG: Thank you, Madame Chair,
 14 Commissioners. Neither of these reasons to believe
 15 involve math, so I should be okay.
 16 I do point though that both of them -- they are
 17 quite similar and we deferred one of them until today so
 18 that you can consider them together because they raise
 19 identical issues or very similar issues, and that is the
 20 issue of coordination in campaigns. Because, as you
 21 know, we match for independent expenditures but we do
 22 not match for coordinated expenditures.
 23 In other words, if an independent expenditure
 24 committee goes to the Janet Napolitano's Campaign and
 25 says, who do you want us to mail this hit piece on Len

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1 that coordination is the campaign's employment of Nathan
 2 Sproul who, as you know, is a prominent Republican in
 3 the state, one of the most prominent Republicans in the
 4 state, in fact. And is involved in many campaigns and a
 5 key strategist for the Republicans.
 6 And he was doing consulting work also while
 7 employed with the Arizona GOP as an issue advocate and
 8 get-out-the-vote coordinator. He was doing consulting
 9 work on both this ad and other matters to the Munsil
 10 Campaign.
 11 You see the analysis of what constitutes an
 12 independent expenditure, and you see under 16-901.14, it
 13 had to be made without consultation or cooperation with
 14 a candidate, or committee, or agent of the candidate,
 15 not made in concert.
 16 And 16-901.01 if you look at the definition of
 17 agent, it is quite broad. It is clear as a technical
 18 matter that Mr. Sproul is both an agent of the Munsil
 19 Campaign and an agent of the Arizona GOP.
 20 Therefore, technically we have a violation
 21 here. And as you will see in the next matter regarding
 22 Napolitano, we have a technical violation there -- there
 23 as well.
 24 The response you have before you indicates
 25 there was no direct coordination. That the party didn't

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1 work with Mr. Sproul on the Web ads directly and that
 2 there was no shared information.
 3 This will be a violation of the contribution
 4 limits and it would be --
 5 (Whereupon a dial tone is heard from the
 6 speakerphone.)
 7 CHAIRPERSON BUSCHING: Mr. Lang, let me check
 8 and see.
 9 Commissioner Parker?
 10 COMMISSIONER PARKER: Yes.
 11 CHAIRPERSON BUSCHING: Commissioner Scaramazzo?
 12 I think we've lost him.
 13 MS. MURPHY: Yeah.
 14 (Whereupon a recess is held from 10:43 a.m.
 15 until 10:46 a.m.)
 16 CHAIRPERSON BUSCHING: All right. Mr. Lang,
 17 we'll continue where we left off.
 18 We are now without Commissioner
 19 Scaramazzo.
 20 MR. LANG: Thank you, Madame Chair. Then you
 21 see my Part C of the document, which even though I find
 22 a technical violation, I recommend that the Commission
 23 issue a no reason to believe.
 24 First of all, the Munsil Campaign assures us
 25 that Mr. Sproul had no knowledge of the ad and did not

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1 work on the ad in anyway. There was no actual
 2 coordination. Even though technically as a legal matter
 3 there was a technical coordination, there was no real or
 4 actual coordination. And I'm satisfied that was, in
 5 fact, the case.
 6 The ad was of low value and already issued
 7 matching funds. And I think given the situation, had we
 8 not issued matching funds and found a technical
 9 violation, there would have been a small fine, perhaps
 10 some sort of resolution in both cases. And I think the
 11 campaign is better off receiving the matching funds.
 12 Especially given the fact that I think this is a
 13 technical violation.
 14 It also raises the whole issue of consultants.
 15 And it's a problem because campaigns use the same
 16 consultants. There's a few folks out there that have
 17 expertise in certain areas. And you will see in the
 18 other matter, Max Fose is the Internet guy. And all the
 19 campaigns want to use these folks. Yet, under 16-901,
 20 which is not a Clean Elections' law, the definition of
 21 agent is so broad it sweeps all these consultants and
 22 makes it impossible to use consultants without tripping
 23 up under Clean Elections.
 24 I think that will be a disincentive to
 25 participate, so I think the Commission should find no

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1 reason to believe in this case.
 2 As to Mr. Maddox's letter, which is certainly
 3 an interesting read, I don't agree though that this is
 4 just pure issue advocacy, the Website is pure issue
 5 advocacy.
 6 Though it was certainly critical of the 9/11
 7 Commission -- the 9/11 Memorial. Instead of attacking
 8 the commission who was the one that approved and created
 9 the Memorial, it attacked the Governor. Spent the whole
 10 time going through in the ad how she did things wrong
 11 and how she didn't do a good job.
 12 I think ultimately there's only one action
 13 endorsed by that. You already found it's expressed
 14 advocacy, but I wanted to address his letter.
 15 And so I recommend that we stand by -- the
 16 Commission stand by its decision to issue matching funds
 17 and not find reason to believe the violation occurred in
 18 this case regarding the Munsil Campaign and Mr. Sproul's
 19 involvement.
 20 CHAIRPERSON BUSCHING: All right. Thank you.
 21 Are there questions of Mr. Lang?
 22 Is there anyone from the public that wishes to
 23 speak to this matter?
 24 MR. MADDOX: Yes, ma'am.
 25 CHAIRPERSON BUSCHING: If you could keep it to

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1 five minutes, please.
 2 MR. MADDOX: Yes, ma'am.
 3 David Maddox for the Munsil Campaign.
 4 Just a couple points.
 5 In my letter I ask for you to reconsider your
 6 expressed advocacy and I did that very simply because
 7 the Commission's rules says that speech cannot be
 8 expressed advocacy of the election or defeat of a
 9 clearly identified candidate when reasonable minds could
 10 defer as to whether it encourages a vote for or against
 11 a candidate. And the Commission didn't vote unanimously
 12 it was expressed advocacy. So, I'm assuming under the
 13 rule, reasonable minds were different. I think it was
 14 three to one. But at least one Commissioner disagreed
 15 as to whether or not it was.
 16 And under your rule I think, and we continue to
 17 believe it was something that was put together by the
 18 Republican Party that dealt with an issue, an idea, and
 19 it was not -- it never said anything about voting and
 20 all of that. So I think reconsideration may be
 21 appropriate.
 22 On the specific issue of Mr. Nathan Sproul, I
 23 would point out, I agree totally with Todd that the law
 24 is messed up and when they married these things
 25 together, they don't work. And the definition and

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1 whatnot are confusing.
 2 But the facts you need to keep in mind here is
 3 Mr. Sproul was employed by the Arizona Republican Party
 4 long before he was ever employed by the Munsil Campaign.
 5 And he was employed not to give advice on ads at that
 6 time -- I don't know how he's employed now, but we're
 7 talking about this thing this time. He was employed to
 8 do exactly what the statute allows, which is political
 9 party can deal with voter education efforts and increase
 10 voter turnout. And that's what he was employed to do.
 11 The party ran an ad. And I've provided you
 12 with an affidavit that says he didn't have anything to
 13 do with the ad, didn't know about the ad, it was
 14 prepared and ran and it was run on the Website.
 15 Clearly, there's no coordination and clearly
 16 there is somebody who is doing something that the
 17 statute says he can do. A political party can employ
 18 someone to do voter issues.
 19 Now, I agree that the ambiguity is there and,
 20 you know, but it would be silly to say because he was
 21 employed previously to do voter efforts and had nothing
 22 to do with the ad, that there is some sort of an, you
 23 know, evil coordination. It just isn't there.
 24 So I certainly agree with his conclusion that
 25 you should not investigate it, but I would go back and

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1 just say again on the main point of whether even the
 2 \$400 of matching funds should have been granted, there's
 3 a difference on the Commission and reasonable minds can
 4 differ. And it's not expressed advocacy under your own
 5 rule and should ask for the funds to be returned to you.
 6 Thank you.
 7 CHAIRPERSON BUSCHING: Thank you. Are there
 8 questions of Mr. Maddox?
 9 MR. MADDOX: Oh, sorry.
 10 CHAIRPERSON BUSCHING: If not, thank you.
 11 MR. MADDOX: Thank you.
 12 CHAIRPERSON BUSCHING: Is there anyone else
 13 from the public that wishes to speak to this matter?
 14 If not, we'll turn to the Commission and are
 15 there any questions or a motion?
 16 COMMISSIONER KUNASEK: Madame Chair, I would
 17 move that we consider the recommendation of the Director
 18 that there is no reason to believe there was a
 19 violation.
 20 CHAIRPERSON BUSCHING: Is there a second?
 21 COMMISSIONER JOLLEY: I'll second that.
 22 CHAIRPERSON BUSCHING: It's been moved by
 23 Commissioner Kunasek and seconded by Commissioner Jolley
 24 that we find no reason to believe in MUR 06-0023.
 25 Further discussion?

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1 If not, the Chair will call for the question,
 2 all in favor say, "aye."
 3 (Chorus of ayes.)
 4 CHAIRPERSON BUSCHING: Opposed, nay?
 5 Chair votes aye. Motion carries.
 6 Item IV B), MUR 06-0032, Janet Napolitano,
 7 reason to believe.
 8 Mr. Lang?
 9 MR. LANG: Thank you, Madame Chair. You have
 10 before you my recommendation along with the complaint by
 11 Douglas Drury and the response by the Napolitano
 12 Campaign by Andy Gordon.
 13 This is very similar to the issue you've just
 14 discussed. In fact, I was working on one of these and
 15 Eric was working on the other, and we edited our pieces
 16 to make them very similar because we felt the analysis
 17 should be similar. And that's what you have before you.
 18 Again, we've already issued matching funds, and
 19 because we found that this was expressed advocacy. This
 20 involved the Prop107.com criticism of Len Munsil and
 21 e-mails that were sent out by folks to go see that
 22 Website. And the e-mail said, "Click here to watch a
 23 video of someone who wants to take the rights of
 24 thousands and thousands of Arizona resident."
 25 I think that's a typo actually. It only said

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1 "thousand" once.
 2 So, we found that was expressed advocacy. The
 3 Commission agreed with our recommendation and approved
 4 matching funds.
 5 We also have -- we just received last night a
 6 letter from the 107 folks written by Lisa Hauser the
 7 attorney for Arizona Together, the anti-107 folks. And
 8 in it she strongly asserts that there is no expressed
 9 advocacy, that it's simply an issue advocacy piece
 10 regarding 107 and there's no expressed advocacy against
 11 Len Munsil.
 12 I stand by my recommendation that it is
 13 expressed advocacy against Len Munsil and it's quite
 14 critical of him. And I think it urges both a no vote on
 15 107, but the video itself urges a no vote on Len Munsil
 16 to those who are already predisposed to vote no on 107.
 17 So, I think it is expressed advocacy even
 18 though there it arguably has two meanings. I think
 19 there's one reasonable meaning which is to tie Len
 20 Munsil in with the voters who are already going to vote
 21 no on 107 and get them to vote no on Len Munsil.
 22 And, again, we have the issue of coordination
 23 and the problem here is that the independent consultant
 24 Max Fose who is the well-known expert on Internet, and,
 25 you know, Internet and e-mail communication, was hired

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1 by the No-On-107 folks at Arizona Together to do this
2 e-mail.

3 So, again, we have the problem because the
4 definition of agent is so vastly broad, that if you are
5 just a consultant, you are an agent of that campaign
6 under 16-901.01. So, again, technically, we have a
7 violation here.

8 Max Fose is not a general political consultant
9 or a campaign manager, he is a computer, e-mail expert,
10 Internet expert. So, arguably, his connection between
11 the two campaigns is even more attenuated. But,
12 nonetheless, he is also an agent under the technical
13 definition.

14 But you have the response from Andy Gordon, you
15 have the affidavits from him, from Max Fose and from
16 Noah Kroloff, the campaign manager for the Napolitano
17 Campaign, saying they have no knowledge of the ad. In
18 fact, Kroloff asked them to take down the ad once he
19 learned of it because of the concern of any coordination
20 issue.

21 So we have technical coordination but we have
22 clear factual situation that, in fact, there was no
23 coordination and quite to the contrary the site was
24 taken down at the request of the Napolitano Campaign.

25 So, I think here even though we have a

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1 technical violation, again, I strongly recommend the
2 Commission find no reason to believe. We need to come
3 up with some rules if no statutory change is made and
4 the parties may look into that. If there are no
5 statutory changes made, we need to have some rules that
6 address the use of consultants. We are already planning
7 on doing that anyway with volunteer work by consultants
8 and probably need to have rules for this.

9 And in the meantime I ask you find no reason to
10 believe there's been a violation in this case.

11 CHAIRPERSON BUSCHING: Thank you.

12 Are there questions of Mr. Lang?

13 Is there anyone from the public that wishes to
14 speak to this matter?

15 Ma'am?

16 MS. DEMARCHI: Good morning, Commissioner. My
17 name is Kim Demarchi and I'm here on behalf of the
18 Governor's Re-Election Campaign.

19 I promise to stay under five minutes, I hope to
20 stay even under that.

21 As you will have noticed from the
22 correspondence in this case there is some disagreement
23 between myself and my co-counsel Andy Gordon, and Mr.
24 Lang about whether Max Fose could be considered an agent
25 of this candidate. Because he is not a general

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1 political consultant, he is not authorized to expend
2 money. So in our view he doesn't fit the definition of
3 an agent under 16-901.

4 But we certainly agree with Mr. Lang's
5 conclusion and that is in these circumstances where
6 there is absolutely no evidence of collusion between the
7 two organizations who seemingly happen to have the same
8 really good Web guy, that there's no reason to find
9 coordination here.

10 Obviously, the concern about coordination is a
11 concern that pretend in-kind expenditures are actually
12 the result of wheeling and dealing between committees
13 trying to get around the expenditure rules. And we
14 don't have any of that at all. Every one of those guys
15 say, we didn't really know this was going on. And all
16 that Max did is took a video that the No-On-107 folks
17 shot and e-mailed it out.

18 As Todd pointed out during his earlier
19 comments, particularly in a state like ours where there
20 are a small number of people with the expertise in this
21 particular industry as the vendors to a number of
22 political campaigns, extending penalties for
23 coordination to circumstances like this would really
24 interfere with our candidate's ability to get the kind
25 of help they need for their campaign.

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1 So I would urge you to adopt Mr. Lang's
2 recommendation.

3 CHAIRPERSON BUSCHING: Thank you.

4 Are there questions of Ms. Demarchi?

5 MS. DEMARCHI: Thank you.

6 CHAIRPERSON BUSCHING: Thank you for the
7 opportunity to speak, ma'am.

8 MS. HAUSER: Lisa Hauser here representing the
9 Arizona Together Proposition 107 Campaign.

10 I only want to state with respect to this
11 matter very briefly that I agree with Ms. Demarchi's
12 comments with respect to the role that ISW, Max Fose's
13 company played in this particular company for Arizona
14 Together. He is a vendor much the same as the company
15 that would print the signs.

16 Arizona Together has campaign consultants who
17 make those kinds of decisions about, you know,
18 strategies, messaging, what is needed on the Website.
19 And in this particular campaign, ISW performs a role
20 that does not involve making those kinds of judgment
21 decisions; but, simply, you know, please put this up on
22 our Website.

23 So I disagree in general that the definition of
24 agent is so broad that it can snare almost, you know,
25 anyone who works on a campaign. I completely reject

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1 that notion having been familiar with and worked on the
2 legislature that was adopted in the early 1990s to
3 implement these provisions.

4 So, I do agree with Mr. Lang's comment that you
5 need to take a hard look at agent and what is
6 intended -- that was intended by the legislative here,
7 because I think you may be going too broad in that
8 regard.

9 But if you take a look at the Federal Election
10 Commission Rules, many of the statutes adopted in the
11 '90s were modeled on those. And if you look at those
12 and you take a look at the advisory opinions that have
13 come out of the FEC, I think that may provide some
14 instructive information to you going forward. Thank
15 you.

16 CHAIRPERSON BUSCHING: Thank you.
17 Commissioner Kunasek?

18 COMMISSIONER KUNASEK: I am trying to figure
19 out what I heard. Is Max Fose working for both
20 campaigns, the pro and con here in this issue?

21 Is he performing one function for the
22 anti-people and a different function for the pro-people?

23 MS. HAUSER: I'm not familiar with how broad he
24 performs for the Napolitano Campaign. I do know that
25 for Arizona Together it's, you know, more of a vendor

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1 role. He's not consulting in the sense of a political
2 consultant. You know, like a Webmaster. More on that
3 role.

4 COMMISSIONER KUNASEK: So he could possibly be
5 working for both camps?

6 MS. HAUSER: Absolutely. But I think, as I
7 said, it depends on how you read the definition of
8 agent.

9 COMMISSIONER KUNASEK: Okay. I get it.

10 MS. HAUSER: And I think what the legislature
11 intended here is someone who has some substantive
12 ability to influence messaging, and to, you know, share
13 strategies and information between campaigns.

14 And, certainly, it doesn't preclude campaigns
15 from hiring the same company to make their signs. Those
16 kinds of things are not, I think, you know, situations
17 that would make the sign company an agent of the
18 campaign.

19 COMMISSIONER KUNASEK: Thank you.

20 CHAIRPERSON BUSCHING: Is there anyone else
21 that wishes to speak?

22 MR. DRURY: Good morning. Douglas Drury on
23 behalf of the Len Munsil Campaign. Thank you.

24 First, I want to say with all the speakers,
25 there's major gray areas here and major trouble the way

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1 this is structured.

2 I do want to point out just a couple of points,
3 I agree with Mr. Lang on finding of expressed advocacy.
4 I seem to be talking a lot about "Stop this man" and "I
5 want to know what his bigger goal is" and not even
6 talking about 107 any longer.

7 But on the issue of coordination, we've got a
8 real problem here. First of all, we've got -- there --
9 there's a major difference between this issue we
10 discussed previously with Mr. Sproul and this one that
11 is Mr. Fose. As he said, in his affidavit that he had a
12 direct hand in the production of this ad.

13 So, when Mr. Lang was speaking earlier there's
14 a distinction here because Mr. Sproul said he knew
15 nothing about it and didn't have anything to do with it.
16 And Mr. Fose said I did have something to do with this
17 one.

18 He is an agent as Mr. Lang found in both
19 campaigns. And that certainly raises the issue of
20 coordination. And we understand if the Commission finds
21 that -- decides not to proceed here, but then I want the
22 Commission to understand I think you're setting a
23 precedent.

24 The Democrats started with the complaint
25 against Mr. Sproul and they're really talking out of

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1 both sides of their mouth here because they're saying
2 that is and you know if that is this situation of Mr.
3 Fose is worse because there's direct participation.
4 Oh, and on top of that, even after Mr. Lang's
5 recommendations which are consistent but for the
6 difference in the direct roles of the parties, the
7 Democrats have filed yet another complaint which I'm
8 sure will be heard at some point in time along the same
9 line.

10 So they're sitting here today saying, look,
11 this is not coordination because the consultants worked
12 for different parties. If that's the case they should
13 stop filing those complaints saying that our consultants
14 are working for both sides, because that's what's
15 happening.

16 (Whereupon a cellular phone rings.)

17 MR. DRURY: More troubling for me on a global
18 area on the consulting issue is an actual coordination
19 argument where there are all kinds of issues.

20 The Republican Party is not here today to speak
21 on this, but here we're troubled by this whole aspect of
22 what the Democrats have been doing throughout this whole
23 campaign. They got an arm and hired this independent,
24 and funded to at least a hundred thousand dollars to an
25 IE. And initially denied they even funded it until we

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1 brought a complaint and then that flushed out they had
2 funded it.

3 The Governor is running a campaign that says,
4 "I'm running clean, I'm not criticizing my opponent."
5 And meanwhile these other groups are out there
6 repeatedly hitting Mr. Munsil. That, at least, gives an
7 appearance of some coordination. You have the left hand
8 going with the negative stuff, the right hand going with
9 the positive stuff.

10 So that's been a concern to us throughout and
11 that's been part of the cause of our filings.

12 And it's especially troubling when it comes to
13 107. Because the question that I had when I saw this ad
14 was, why is an issue advocacy group going directly after
15 Mr. Munsil. And if you've seen the ad, it's going
16 directly after Mr. Munsil. They can say all they want
17 that it's not really expressed advocacy. Mr. Lang found
18 it was. And it's not even a hard call that it was
19 expressed.

20 So why are the allies going along in a
21 particularly -- particular way that does seem
22 coordinated without any direct evidence of coordination.
23 That's what we've been asked to look into.

24 So whatever you decide is fine, but the two
25 sides need to be treated similarly. And on this one

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1 This other thing is that I think Mr. Drury is
2 not reading Mr. Fose's affidavit quite correctly. There
3 is few issues to make clear. He didn't discuss the
4 advertisement in anyway with the Napolitano Campaign and
5 that he was provided with a copy and a video by the
6 No-On-107 Campaign and simply put it together and
7 distributed it.

8 It's not -- it's not a production, or editing,
9 or advising role in putting that ad together, it's just
10 the technical part that I know I sure couldn't do
11 myself.

12 CHAIRPERSON BUSCHING: Thank you.

13 Where there any questions of Ms.
14 Demarchi?

15 MS. DEMARCHI: Thank you.

16 CHAIRPERSON BUSCHING: If not, is there anyone
17 else that wishes to speak to this matter?

18 MR. DRURY: I just want to say in rebuttal --
19 this is Doug Drury again.

20 This is the flash ad that is the subject of the
21 Munsil complaint, was prepared by me, so that's what I'm
22 reading from is Mr. Fose's affidavit, "Working solely on
23 behalf Arizona Together." And then goes on, "The
24 initiative campaign committee opposed to 107."
25 CHAIRPERSON BUSCHING: Thank you.

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1 particular issue, we are troubled by the fact that Mr.
2 Fose did admit that he had a direct hand in the ad as
3 opposed to Mr. Sproul who said he had nothing to do with
4 it.

5 CHAIRPERSON BUSCHING: Thank you.

6 MR. DRURY: Thank you.

7 CHAIRPERSON BUSCHING: Are there any questions
8 of Mr. Drury? Thank you.

9 Is there anyone else that wishes to speak to
10 this matter?

11 If no one else wishes to speak, I'll let you
12 give a very short rebuttal.

13 MS. DEMARCHI: Thank you. I appreciate the
14 opportunity to do so. This is Ms. Demarchi.

15 I wanted to try to help answer Commissioner
16 Kunasek's question. The allegation is Mr. Fose -- well,
17 the truth is that Mr. Fose is a Web consultant for the
18 Governor's Campaign and on a ballot initiative. It's
19 not two sides of the ballot initiative or two sides of
20 the Governor's Campaign. It's actually two completely
21 different races or issues.

22 COMMISSIONER KUNASEK: I got you.

23 MR. DEMARCHI: I know that's an issue that the
24 Commission has dealt with before you and there's
25 complexity to that.

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1 Mr. Lang?

2 MR. LANG: Thank you, Madame Chair,
3 Commissioners. The only -- I guess two points were
4 raised that I wanted to address. One is precedence. I
5 agree there's dangerous precedence here and that I'm
6 finding technical violations yet recommending no
7 enforcement. I think in both cases we have adequate
8 assurances there's no meaningful sharing of information
9 or discussion of strategies.

10 In fact, in this particular matter, both Mr.
11 Fose and Mr. Kroloff attested and swear that, in fact,
12 they had no knowledge. That the Napolitano Campaign had
13 no knowledge that this ad was going. And what was
14 important to me was that as soon so Mr. Kroloff found
15 out about the ad, he told him to take it down.

16 This isn't an attempt to skirt the rules. This
17 isn't an attempt to exploit a loophole. This is a case
18 of a consultant working on two campaigns.

19 As Ms. Hauser pointed out, Mr. Fose is a very
20 particular consultant. In fact, she argues that he's
21 not even a consultant for purpose of the agent
22 definition. The agent definition says, "A political
23 consultant for a candidate or political committee." So
24 you know only under the political consultant, would this
25 even be subject to the problem. And I think, I mean,

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1 look at the research she suggests. I think maybe there
 2 is an argument he is not that.
 3 As to the precedent issue, I'm quite
 4 comfortable with the precedent we're setting in this
 5 case. Because I think where you have sworn statements
 6 that there was no sharing of information, where you have
 7 such an intimated sharing, you know, where you have
 8 someone who plays a very particular role like Mr. Fose
 9 and doesn't generally consult with political strategy.
 10 I'm quite comfortable with that.
 11 Mr. Sproul is actually more challenging to me
 12 because he is such a prominent political strategist.
 13 But I, again, I think I was -- I was swayed by the
 14 attestation of the assurances received from the
 15 campaigns that he had no knowledge of the particular
 16 9/11 Web ad in that case.
 17 So, in both cases I feel uncomfortable with and
 18 I would have hated to have a precedent in this case
 19 where hyper-technical violations are enforced virtually
 20 by the Commission. I don't think that serves the best
 21 interest of anyone.
 22 If this involved a huge mailing of, you know, a
 23 hundred thousand dollars or \$50,000, then I'd look much
 24 more carefully at the nature of the agency and the roles
 25 that the particular folks played because of the danger

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1 back to the matching funds' issue more than the
 2 coordination issue. But, as I recall, Commissioner
 3 Parker, the Republican Party had a press conference and
 4 invited people to look at the ads and sent out e-mails
 5 and the like as well.
 6 So I think they were both, quote, unquote,
 7 advertised by the parties or by the respective parties
 8 to encourage people to see the ads. I don't think
 9 there's a major difference there.
 10 CHAIRPERSON BUSCHING: And Ms. Hauser I think
 11 wants to clarify for us.
 12 MR. LANG: That would be great.
 13 MS. HAUSER: I have that number actually. The
 14 number of e-mails was basically 15,000 and it went
 15 exclusively to a list of Proposition 107 supporters.
 16 Self-identified supporters who had signed up on the
 17 Website previously to receive information.
 18 MR. LANG: Prop 107 opponents?
 19 MS. HAUSER: I'm sorry. Supporters of Arizona
 20 Together. Yes, proposition 107 opponents but supporters
 21 of Arizona Together.
 22 CHAIRPERSON BUSCHING: Thank you.
 23 COMMISSIONER PARKER: Thank you.
 24 CHAIRPERSON BUSCHING: Commissioner Jolley, you
 25 had your hand up as well.

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1 of harm. But in this case where the mailers were for a
 2 very small amount, I recommend that the Commission find
 3 no reason to believe.
 4 CHAIRPERSON BUSCHING: Thank you.
 5 MR. LANG: They weren't mailers, but Web ads.
 6 CHAIRPERSON BUSCHING: Any questions of Mr.
 7 Lang?
 8 Discussion or a motion?
 9 COMMISSIONER PARKER: Todd, I have one
 10 question.
 11 CHAIRPERSON BUSCHING: Commissioner Parker?
 12 COMMISSIONER PARKER: Do we know how many Web
 13 e-mails were sent out for people to come and look at
 14 that Web ad?
 15 MR. LANG: I don't have that information. We
 16 did receive information from Ms. Hauser about \$212 was
 17 expended on the creation of the ad. But I don't know.
 18 I don't know the answer to that.
 19 COMMISSIONER PARKER: Because I think the
 20 difference between this one and the other one is that
 21 this one sought people to come to the Website via e-mail
 22 to see that ad, versus the other one was just on the
 23 Republican Party Website and people had to go to that
 24 Website unsolicited so to speak to see that.
 25 MR. LANG: As I recall -- and, again, this goes

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1 COMMISSIONER JOLLEY: I got the information
 2 answered.
 3 CHAIRPERSON BUSCHING: All right. Further
 4 discussion or a motion?
 5 Commissioner Jolley?
 6 COMMISSIONER JOLLEY: I'll make a motion in the
 7 matter under review, number 06-0032, Janet Napolitano, a
 8 participating candidate for governor, that the
 9 Commission find there's no reason to believe a violation
 10 occurred.
 11 COMMISSIONER KUNASEK: Madame Chair, before I
 12 second the motion I would just like to editorialize a
 13 little bit.
 14 I think too that there should be some concerted
 15 effort by all the parties to try to get together over
 16 the interim and bring some, I guess, order out of what
 17 appears to me to be chaos in this whole situation.
 18 I second the motion.
 19 CHAIRPERSON BUSCHING: It's been moved by
 20 Commissioner Jolley and seconded by Commissioner Kunasek
 21 that we find no reason to believe in matter of MUR
 22 06-0032. All in favor say, "aye."
 23 (Chorus of ayes.)
 24 CHAIRPERSON BUSCHING: Opposed, nay?
 25 Chair votes aye. Motion carries.

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1 Item V, discussion and consideration regarding
 2 purchase of voter list by CCEC for distribution to
 3 participating candidates.
 4 MR. LANG: Madame Chair?
 5 CHAIRPERSON BUSCHING: Yes.
 6 MR. LANG: I think that should probably go to
 7 executive session or I recommend executive session for
 8 legal advice from Ms. Varela.
 9 But we received the information we needed from
 10 the Arizona Values Coalition. So if you're interested,
 11 we could go back to that agenda item --
 12 CHAIRPERSON BUSCHING: Okay.
 13 MR. LANG: -- for consideration so that folks
 14 don't have to wait for executive session.
 15 CHAIRPERSON BUSCHING: All right.
 16 We will resume Item III(D), consideration
 17 and possible ratification of issuance of matching funds
 18 for reported independent expenditures in the following
 19 slate matter -- slate mailers (D), Bill Montgomery, Len
 20 Munsil, and Russ Jones, and others I guess.
 21 MR. LANG: Thank you, Madame Chair,
 22 Commissioners. Daniel Ruiz called the Arizona Values
 23 Coalition and, once again, they were cooperative and
 24 they said it's going out today and only going to
 25 Legislative District 18, which is the district in Mr.

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1 Yarbrough and Mr. Jones are I believe.
 2 COMMISSIONER JOLLEY: District 24 is Mr. Jones.
 3 MR. LANG: All right. Well, it's going to
 4 District 18, which is Mr. Pierce's district who is not a
 5 participating candidate.
 6 So given that -- and the total cost of the
 7 mailer, including printing and postage is \$5,588.57.
 8 Given that, given there's no participating candidates in
 9 that district who are being criticized my --
 10 MS. VARELA: Len Munsil.
 11 MR. LANG: Yeah, but in that district.
 12 -- my recommendation is we issue matching
 13 funds only for Mr. Montgomery and Mr. Munsil in regard
 14 to one-sixth of the total cost and not for Mr. Jones
 15 because he's not in that district. Because they're
 16 statewide candidates, Mr. Montgomery and Mr. Munsil,
 17 their electorate is there as it is everywhere.
 18 So I recommend that we issue one-sixth of the
 19 total amount which is slightly less than \$1,000 to each
 20 of them in matching funds.
 21 CHAIRPERSON BUSCHING: Any questions or
 22 discussion?
 23 COMMISSIONER PARKER: Todd?
 24 MR. LANG: Yeah.
 25 COMMISSIONER PARKER: You said it's only going

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1 to District 18 and that's Russell Pierce and Steve
 2 Yarbrough only?
 3 MR. LANG: I think it's just Mr. Pierce's
 4 district, and he's not a participating so he wouldn't
 5 get matching funds.
 6 But it does criticize Mr. Munsil and Mr.
 7 Montgomery --
 8 COMMISSIONER PARKER: Okay.
 9 MR. LANG: -- which is why I still recommend
 10 matching funds. And, again, it's sort of a moot point
 11 with Mr. Jones because he's already maxed out. But had
 12 he not been maxed out, I would not recommend matching
 13 funds for him.
 14 CHAIRPERSON BUSCHING: Other questions or a
 15 motion?
 16 COMMISSIONER JOLLEY: Yeah, I have a question.
 17 CHAIRPERSON BUSCHING: Commissioner Jolley?
 18 COMMISSIONER JOLLEY: So, Todd, what is the
 19 guarantee it only goes to Legislative District 18? What
 20 if it ends up in a different district?
 21 I guess it will be reported and then the
 22 campaign would be compensated for that amount?
 23 MR. LANG: In that unlikely occurrence,
 24 Commissioner Jolley, yes. We would -- we could issue
 25 matching funds for wherever it goes.

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1 If it went to Mr. Jones' district -- this is
 2 all sort of hypothetical anyway, because none of the
 3 other folks are going to receive matching funds. The
 4 only one who is -- the only two who are qualified to
 5 receive matching funds in this particular case are Mr.
 6 Munsil and Mr. Montgomery. And it doesn't matter which
 7 district it goes to vis-à-vis them, it's really only a
 8 hyp- -- it's only a -- it's a moot point.
 9 COMMISSIONER JOLLEY: Okay. Thank you.
 10 CHAIRPERSON BUSCHING: Other discussion or a
 11 motion?
 12 COMMISSIONER KUNASEK: On that point, to the
 13 extent that it would go to more districts, you have more
 14 postage involved. So that might have a play on that
 15 matching amount.
 16 MR. LANG: Commissioner Kunasek, Madame Chair,
 17 that's correct. But I believe them when they tell us
 18 how much they're spending, the \$5,588. They've been
 19 straight with us the whole time and I don't expect that
 20 will change.
 21 COMMISSIONER KUNASEK: And if it does, we could
 22 probably vote to reopen.
 23 MR. LANG: Right.
 24 COMMISSIONER PARKER: Madame Chairman?
 25 CHAIRPERSON BUSCHING: Commissioner Parker?

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1 COMMISSIONER PARKER: I guess I still have a
 2 problem with splitting it up six ways. It's,
 3 obviously -- since Mr. Pierce is not a participating
 4 candidate, it's obviously geared at Montgomery and
 5 Munsil. And I really think to be fair to them, we need
 6 to give them a greater share of that pie because they're
 7 the ones that are suffering from this piece.

8 CHAIRPERSON BUSCHING: Commissioner Parker, I'm
 9 confused by what you're saying because -- just because
 10 Mr. Pierce is not a participating candidate, I mean, I
 11 think that all of these people are candidates and it's
 12 directed to all of them.

13 COMMISSIONER PARKER: Well, it's only going to
 14 District 18. Only Pierce, Montgomery, and Munsil are
 15 the ones those people can vote for. So that's why I
 16 think it should with a third of the cost rather than a
 17 sixth of the cost.

18 CHAIRPERSON BUSCHING: Okay.
 19 Commissioner Kunasek?

20 COMMISSIONER KUNASEK: Well, but Representative
 21 Pierce is not eligible for funds. He's a
 22 non-participating candidate.

23 COMMISSIONER PARKER: Right. There's nothing
 24 we can do to help him. He is on his own.

25 COMMISSIONER KUNASEK: Right.

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1 Commissioner Busching and seconded by Commissioner
 2 Kunasek that we allocate one-sixth of the cost of the
 3 mailer to Mr. Munsil and one-sixth to Mr. Montgomery.
 4 All in favor say, "aye."

5 COMMISSIONER KUNASEK: Aye.
 6 COMMISSIONER JOLLEY: Aye.
 7 CHAIRPERSON BUSCHING: Opposed, nay?
 8 COMMISSIONER PARKER: Nay.
 9 CHAIRPERSON BUSCHING: Chair votes aye. Motion
 10 carries.

11 Item V, discussion and consideration regarding
 12 purchase of voter list by CCEC for distribution to
 13 participating candidates.

14 Ms. Varela, did you say that we need to go into
 15 executive session?

16 MS. VARELA: I would recommend going into
 17 executive session.

18 CHAIRPERSON BUSCHING: Is this something we
 19 should take up today or can we defer it?

20 MS. VARELA: We can defer it. Just, Mr. Seaman
 21 is the gentleman who raised the issue before us. He's
 22 filed a lawsuit in Yavapai County and I don't think the
 23 Commission has been named as a party. If we have been,
 24 we haven't been served. So -- but it certainly can be
 25 postponed to another day.

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1 COMMISSIONER PARKER: But I think it would be
 2 unfair to the other candidates to split their portion of
 3 it when it's only going into only that one district.
 4 The other guys it doesn't matter because those people
 5 can't vote for them. They're just trying to paint a
 6 broad brush and -- and including everybody that they,
 7 you know, that they had something negative to say about.

8 But if it's only going to a select group of
 9 people, I -- I think that in order to -- to do our jobs
 10 properly, we need to give them the matching funds
 11 based -- based upon a third rather than a sixth.

12 CHAIRPERSON BUSCHING: Okay. Thank you.
 13 Other comments or a motion?

14 COMMISSIONER PARKER: Well, I'd make a motion
 15 that we provide one-third of the cost of this mailer to
 16 Mr. Montgomery and Mr. Munsil.

17 CHAIRPERSON BUSCHING: Is there a second?
 18 If not, further discussion or another
 19 motion?

20 Well, I'll make a motion that we allocate
 21 one-sixth of the mailer to Mr. Montgomery and to Mr.
 22 Munsil.

23 Is there a second to that?

24 COMMISSIONER KUNASEK: Second.

25 CHAIRPERSON BUSCHING: It's been moved by

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1 CHAIRPERSON BUSCHING: Then at the discretion
 2 of the Chair, we'll postpone it to another day.

3 MS. VARELA: That's fine.

4 CHAIRPERSON BUSCHING: And Item VI, random
 5 audit selection of statewide offices in legislative
 6 districts for the 2006 primary and general election
 7 cycle.

8 Mr. Lang?

9 MR. LANG: Thank you, Madame Chair. Mike
 10 Becker and Colleen McGee are here to put this together
 11 for you.

12 COMMISSIONER KUNASEK: Looks like we're going
 13 to have a lottery.

14 MS. MCGEE: Good morning, Commissioners.

15 CHAIRPERSON BUSCHING: Would you explain to
 16 Commissioner Parker what we're doing?

17 MS. MCGEE: I will. Commissioners, as you
 18 know, during an election year the Commission conducts a
 19 random selection of offices that's going to be receiving
 20 an audit.

21 This year will be the first time that we've
 22 selected statewide offices. We're going to select two
 23 statewide offices and all candidates running for that
 24 office will receive an audit for statewide.

25 We'll start with that. We have seven statewide

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1 offices and we have seven envelopes unmarked. And
 2 inside each envelope is an office name.
 3 So, Mike will choose two and all candidates
 4 running in that office, participating and
 5 non-participating, will receive -- the first drawing
 6 will be for the primary filings and second drawing will
 7 be for the general filings.
 8 CHAIRPERSON BUSCHING: Okay.
 9 MS. MCGEE: Okay. Mike, you're on. Go ahead.
 10 Our first office, statewide office --
 11 MR. LANG: And the winner is
 12 MS. MCGEE: The winner is -- I don't know if
 13 they'll feel that -- the Secretary of State's office.
 14 So all candidates running for Secretary of State in the
 15 primary will receive an audit.
 16 COMMISSIONER JOLLEY: Oh, that's how it works.
 17 MS. MCGEE: For the general --
 18 MR. MADDOX: No drum roll?
 19 MS. MCGEE: All candidates running for
 20 Corporation Commission will receive an audit for the
 21 general filing period.
 22 We can take that out.
 23 COMMISSIONER JOLLEY: I have a question.
 24 MS. MCGEE: Yes, Commissioner.
 25 COMMISSIONER JOLLEY: Okay. So you don't

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1 separate by non-participating and participating
 2 candidates?
 3 MS. MCGEE: No. The rule requires that all
 4 candidates in that district will receive an audit, even
 5 though you're non-participating. We look for things, if
 6 a non-participating candidate failed to file trigger
 7 reports and things like that. That's why they're
 8 included.
 9 COMMISSIONER JOLLEY: Okay.
 10 MS. MCGEE: Our next selection will be for
 11 senate office. We are going to do four drawings for
 12 senate. We're going to have two senate districts that
 13 receive audits in the primary and two districts that
 14 will receive audits for the general.
 15 MR. LANG: I'm so nervous.
 16 MR. MADDOX: I thought this was the
 17 million-dollar voter.
 18 CHAIRPERSON BUSCHING: Not yet.
 19 MS. MCGEE: The first senate district that will
 20 receive audit for the primary is Senate District - if I
 21 can get it out -- 5. Senate District 5.
 22 So all candidates in -- I'm sorry, I should
 23 have also explained. Up on the board we have districts
 24 that will be excluded because there are no participating
 25 candidates in that district. So, as you can see from

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1 the primary, Senate District 5 is not up there, so
 2 Senate District 5 will receive an audit for the primary.
 3 COMMISSIONER KUNASEK: These are the districts
 4 on the board --
 5 MS. MCGEE: That are excluded from the drawing
 6 because they did not have a participating candidate
 7 running in that district.
 8 COMMISSIONER KUNASEK: But the previous drawing
 9 you had all candidates, whether they are participating
 10 or not.
 11 MS. MCGEE: Right, because we had a
 12 participating candidate running in every statewide
 13 office, that's the difference.
 14 COMMISSIONER KUNASEK: So these have no
 15 participating candidate in any level?
 16 MS. MCGEE: That's correct, sir.
 17 The second Senate District for the
 18 primary that's not excluded here is Senate District 24.
 19 So, there are participating candidates in Senate
 20 District 24 in the primary, so they will be receive the
 21 audit.
 22 The general for senate is Senate District 26 in
 23 the general. There are participating candidates, so all
 24 candidates in District 26 will receive an audit for the
 25 general.

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1 The last Senate District for the general
 2 election is Senate District 28. There are participating
 3 candidates, so Senate District 28 candidates will be
 4 audited.
 5 Okay. Mike, we have to change the cards
 6 because now we have to throw in the House Districts.
 7 Even though they're the same districts, we have to have
 8 different cards.
 9 Okay. First House District for a primary
 10 audit, District 30. There are participating candidates
 11 in District 30, so all candidates will receive an audit.
 12 Second primary, District House 1. There are
 13 participating candidates in the primary in House 1, so
 14 all candidates will receive an audit.
 15 General election, House District 29. There are
 16 participating candidates, so all candidates will receive
 17 an audit.
 18 And the last district -- thank you. House 21.
 19 There are participating candidates, so all House
 20 Districts in District 21 will receive an audit.
 21 And that concludes the selection unless the
 22 Commissioners have questions.
 23 CHAIRPERSON BUSCHING: Thank you.
 24 MS. MCGEE: Thank you.
 25 CHAIRPERSON BUSCHING: Item VII, call for

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1 public comment. This is the time for consideration and
 2 discussion of comments and complaints from the public.
 3 Action taken as a result of public comment will be
 4 limited to directing staff to study the matter, or
 5 rescheduling the matter for further consideration and
 6 decision at a later date, or responding to criticism.

7 Sir?

8 MR. CORBELL: I am, again, Phil Corbell,
 9 citizen.

10 I have filed several complaints as a citizen
 11 and these have mainly been based on the financial
 12 filings that you can see on any of the candidates on the
 13 Secretary of State's Website. And this is a great
 14 service to the public so we can look at all the
 15 candidates we want.

16 As I understand, at least one or two of my
 17 first complaints initially filed back in September
 18 personally, the complaint against Mr. Torres has
 19 admitted to violations. And so a complaint has been
 20 made by a citizen, the person complained about has
 21 admitted it, and yet it's been put aside for further
 22 investigation. And I'm assuming nothing is going to
 23 occur until after the elections are all over with. And
 24 I think this is a disservice of after a month and a half
 25 of having an opportunity to look at some of these

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1 things.

2 Further, I would like to make a notation that
 3 an additional complaint against Mr. Torres comes
 4 directly from the Secretary of State's Website showing
 5 that he indeed had exceeded the maximum amount of funds
 6 that he was allowed to accept.

7 Now, I know for a fact that in the Secretary of
 8 State's software, whenever you put in your data, if it
 9 triggers -- if somebody goes over a certain amount or
 10 whatever, it triggers a warning that you have exceeded,
 11 this person has exceeded the maximum amounts they can
 12 give, et cetera. And this allows the people inputting
 13 the data to obviously take action.

14 I would recommend that the staff ask the
 15 Secretary of State that any time a trigger is hit such
 16 as that, put it on the Website for the entire state of
 17 Arizona, entire nation to see, that the candidate has
 18 posted financial information where he's exceeded the law
 19 in the limits of the amount of money he can accept, that
 20 you all are automatically notified and that you take
 21 action without a citizen having to come in and put in a
 22 complaint.

23 This is very easy to do with the software the
 24 Secretary of State has. This way, any time somebody
 25 files financial data for the public to see and there is

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1 a violation of the law, it will be immediately reported
 2 to you and you can take action on behalf of the citizens
 3 of Arizona, instead of somebody like me having to go in
 4 there and look at it myself and come in and say: Oh, by
 5 the way, do you know they're admitting on the Website
 6 they are violating and aren't doing anything about it.

7 I do appreciate the job you're all doing. As I
 8 seen today, I'm glad I don't have to make some of the
 9 decisions you are. But I do like to get my comments in
 10 and I do believe a little bit more expeditious response
 11 to complaints, be they big or small, is worthy
 12 especially in election season.

13 And I'm working as a volunteer every single day
 14 throughout this campaign. I would hope that some of our
 15 investigators and I know the staff is and you are all,
 16 we do need a little bit more expeditious service that
 17 can be a benefit to the citizens and make sure we have a
 18 level playing field.

19 CHAIRPERSON BUSCHING: Thank you, sir.

20 MR. CORBELL: Thank you very much.

21 CHAIRPERSON BUSCHING: I will direct staff to
 22 put this item on the next regularly scheduled again for
 23 a response and discussion, please.

24 MR. LANG: Okay.

25 CHAIRPERSON BUSCHING: Any other public

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1 comments?

2 MR. MADDUX: Just very brief. David Maddux
 3 again. The Munsil Campaign.

4 I have asked Todd and I just wanted to make it
 5 public to the Commission too that you put 06-0034 on
 6 your agenda for Monday morning. That is the complaint I
 7 filed, the only one I actually filed. And the response
 8 has been received. And it relates to a subvendor in the
 9 gubernatorial race. And it's the kind of information
 10 that we think the public ought to have.

11 And the response indicates they have the
 12 information, but it hasn't been provided. They blocked
 13 -- they spent \$200,000 for media, but we don't know when
 14 it was actually spent. They did the same thing on signs
 15 and other things. There's also a question now raised
 16 for a distribution of school books with a nice page of
 17 the Governor and comments.

18 Primary on the subvendors and how that money
 19 was spent and when it was spent is relevant because of
 20 the time periods involved. You have substantially
 21 punished one candidate for statewide office in
 22 connection with monies that were in the primary that
 23 weren't spent, et cetera.

24 And we don't know whether something wrong was
 25 done here or not, other than it wasn't reported like it

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1 should have been. It was block reported rather than
2 subvendor.

3 That complaint is pending and it has been
4 answered. And I would just ask it come up Monday
5 morning and Todd has agreed with this. Just so we can
6 get a response before the election and the people can
7 know what was actually done here. So I thank you for
8 that.

9 CHAIRPERSON BUSCHING: Thank you.

10 Mr. Lang, you'll work to respond on
11 Monday on this item.

12 MR. LANG: If you want non-matching funds
13 issues on the agenda, it will be there.

14 CHAIRPERSON BUSCHING: Let's have some
15 discussion by the Commission.

16 COMMISSIONER PARKER: Sounds like something we
17 need to talk about.

18 CHAIRPERSON BUSCHING: I'm sorry, Commissioner
19 Parker?

20 COMMISSIONER PARKER: I say yes.

21 COMMISSIONER KUNASEK: Is the last item
22 something that has to be discussed before the election
23 or would it be as effective to discuss it after the
24 election at this point in time?

25 MR. LANG: Madame Chair, Commissioners, in

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1 terms of resolving the case and enforcement, it doesn't
2 matter when we do it, whether it's before or after. In
3 terms of the political interest, and the interest of the
4 press, and interest of parties involved, obviously
5 discussing it before the election would be useful.

6 COMMISSIONER KUNASEK: Okay.

7 MR. LANG: And in terms of educating the voters
8 I suppose as well would be fair.

9 CHAIRPERSON BUSCHING: Are you expressing an
10 opinion?

11 COMMISSIONER KUNASEK: No, I was just asking a
12 question.

13 CHAIRPERSON BUSCHING: Okay.

14 COMMISSIONER JOLLEY: I would say wait until
15 after the election. Because will it -- will a rule
16 change -- will we have to initiate a change of rules or
17 something?

18 MR. LANG: No.

19 COMMISSIONER PARKER: No, it's just to clarify
20 information for the people?

21 MR. LANG: Commissioners, just for your
22 information, generally what we found is -- and I haven't
23 reached any conclusion in this case. What we found is
24 if folks haven't provided the detail and do provide the
25 detail in a timely fashion after we request it, then we

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1 recommend no reason to believe, the staff recommends no
2 reason to believe. And, generally, the Commission has
3 agreed with that recommendation so long as the people
4 get the information they need.

5 CHAIRPERSON BUSCHING: With that, I think I'll
6 leave it to your discretion to determine what's best
7 because we obviously don't have all the background and
8 facts on the situation.

9 MR. LANG: Okay.

10 CHAIRPERSON BUSCHING: Is there anyone else
11 from the public that wishes to speak?

12 If not, we'll -- is there a motion for
13 adjournment?

14 COMMISSIONER KUNASEK: So moved.

15 COMMISSIONER JOLLEY: I second.

16 CHAIRPERSON BUSCHING: It's been moved by
17 Commissioner Kunasek and seconded by Commissioner Jolley
18 that we adjourn. All in favor say, "aye."

19 (Chorus of ayes.)

20 CHAIRPERSON BUSCHING: Opposed, nay?

21 The Chair votes aye. Motion carries.

22 (Whereupon the proceedings conclude at 11:39
23 a.m.)

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1 C E R T I F I C A T E

2
3 I, Angela Furniss Miller, Certified Reporter,
4 do hereby certify that the foregoing pages numbered 1
5 through 100, inclusive, constitute a full and accurate
6 printed record of my stenographic notes taken at said
7 time and place, all done to the best of my skill and
8 ability.

9 DATED, at Phoenix, this 30th day of November,
10 2006.

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14 Angela Furniss Miller, RPR
15 Certified Reporter (AZ50127)
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